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CHARLES WATKINS, ESQ.

BARRISTER AT LAW,

of the Middle Temple.

From an Original Painting by A. R. D. in the possession of R. S. P. D. D.

Published Aug. 22. 1826. by J. & W. T. Clarke, Fleet Street

GENUINE EDITION.

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A

TREATISE

ON

COPYHOLDS.

BY CHARLES WATKINS,

OF THE MIDDLE TEMPLE, ESQ. BARRISTER AT LAW,
AUTHOR OF AN ESSAY ON THE LAW OF DESCENTS, &c. &c.

THE THIRD EDITION,

REVISED, WITH LARGE CORRECTIONS OF THE TEXT FROM THE
AUTHOR'S PAPERS,

NOT IN ANY OTHER EDITION,

AND WITH NOTES OF THE MORE RECENTLY ADJUDGED CASES ON
THE SUBJECT,

BY ROBERT STUDLEY VIDAL,

OF THE MIDDLE TEMPLE, ESQ. F. B. A. THE AUTHOR'S EXECUTOR.

*To this Edition is also added a very large Appendix of
Manorial Customs, &c.*

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TO
CHARLES BUTLER, ESQ.

OF LINCOLN'S-INN, BARRISTER AT LAW,

THIS EDITION

OF THE FOLLOWING

TREATISE ON COPYHOLDS,

IS RESPECTFULLY INSCRIBED

BY HIS MOST FAITHFUL

AND OBLIGED FRIEND AND SERVANT,

THE EDITOR.

THE EDITOR'S
P R E F A C E
TO THE SECOND EDITION.

IN presenting to the Public a new and improved edition of the late Mr. Watkins's *Treatise on Copyholds*, I do not feel it necessary for me to say much in the way of preface.

To expatiate in detail on the merits of a work, which, even in a first edition, has met with the most flattering reception from the Profession at large, and occasionally been noticed with peculiar approbation, by men so eminently distinguished for their intimate acquaintance with the laws of property, as Mr. BUTLER and Mr. PRESTON, would surely be a most unnecessary waste both of time and of words.

With regard, however, to the corrections and additions that are announced in the title page as having been derived from the author's papers, it may not be amiss to remark, that they are by no means of a trivial nature, but, for the most part, of considerable importance, and, altogether, such as cannot fail to enhance his reputation, and add, in no small degree, to the usefulness and authority of his work.

In preparing this edition for the press, the course, which I had at first determined within myself to pursue, was to avoid, as far as possible, the introduction of any other additional matter than such as the author had himself evidently intended for insertion, and had left behind him in his own hand-writing; but at the urgent solicitation of the bookseller, seconded by the recommendation of some highly respectable professional friends, to whose judgment it became me to pay every sort of deference, I have been induced so far to extend the limits of my plan, as to add a

few supplementary notes, embracing the substance of all the more recently adjudged cases on the subject of copyholds, both at law and in equity, down to the present period. To prevent, however, the possibility of any thing, which I may have thus added, being confounded with the annotations or additional references of the author himself, I have caused it, in every instance, carefully to be inclosed within crotchets.

Should it be thought, as, no doubt, by some it may, that this edition might have been brought forward to more advantage under the superintendence of a person of maturer judgment or greater practical experience, I have only to remark, that, feeling to its full extent the weight of the task, I could have been well content, as far as respects myself, to have committed the execution of it to abler hands, but that had I done so, I am certain that I should have acted in direct opposition to the wishes of a most excellent and highly-valued friend, who, on quitting this world for a better,

committed his papers and every thing else that he held most dear and valuable here on earth, in an especial manner to my care, and bad me to remember, that he did so in consequence of my having possessed his confidence beyond any other man breathing.

ROBERT STUDLEY VIDAL.

17 Nov. 1815.

A THIRD edition of this Treatise having been called for, the work has been carefully revised and corrected throughout, and the notes of cases on the subject of Copyholds adjudged since the author's decease, have been regularly brought down to the present time. A copious Abstract of Stat. 55 Geo. III. c. 192. empowering persons to dispose of their copyhold estates by will without surrender, will be found in the Appendix at the end of vol. ii. N° XVIII. p. 364.

R. S. V.

18 Jan. 1821.

THE AUTHOR'S
PREFACE
TO THE FIRST EDITION.

WHEN a Treatise on the Subject of Copyholds is so generally declared to be wanted, an apology for the publication of a Treatise on the Subject of Copyholds cannot be requisite. A Treatise on that subject is, therefore, thus presented to the world.

If what is perfect cannot be attained, it can be no reason why that which is useful should not be attempted. The Author has taken some pains to make the following Treatise useful; but it must not be expected that he has made it perfect. If his labours have not produced what has been wished, they may, at least, shorten, in some measure, the labours of others, and assist some one, blessed with better powers than himself, and with circumstances more propitious, to give to the Profession a Treatise more complete.

He has, where the subject would admit of it, been brief: for a multiplication of words is too often a multiplication of doubts and difficulties. In his references he has been frequent; and he hopes correct; that if errors have escaped him (and whom have they not escaped?) they may be detected. In order to prevent misconception, he has generally given the writer he has cited in the writer's own words; though, at the same time, he has carefully directed the reader where the passage may be found. Nor has he been so fastidious as to reject a form of expression which he himself had adopted, when, in some prior publication he had occasion to treat on the subject immediately before him, merely because it had already occurred.

He has generally also contented himself with barely referring to the published reports of cases. For had he given those reports at length (which might have been done without any great *mental* exertion) he should only have made the reader pay once more for what, perhaps, he had paid half a dozen times already: and even if he had given them at length, the books themselves must have been resorted to at last. A few cases, indeed, are given at length: but that was because

those cases were *not* before in print; and which, therefore, perhaps, constitute the most important part of his work; and for those cases he is chiefly indebted to the friendship of Mr. BUTLER.

He has endeavoured to extract something at least like consistency from the crude mass of matter which the books afford. He has even endeavoured to reconcile the jarring and discordant cases on several points which he had to consider; but this, he must confess, sometimes appeared to be rather out of the reach of the powers usually allotted to humanity; and which he, consequently, could only lament. He has endeavoured also to reduce some cases to acknowledged principles, and to rescue others from the clouds of mystery in which they had been so long enwrapped; and if he has been *guilty* of unusual freedom in so doing, in calling in question the doctrines consecrated by time or by *authority* (as it is too frequently termed, as if any thing could be an authority against truth!) but which, perhaps, had nothing but time or such authority to consecrate them, he can only say that he is sorry that such freedom had not been exerted by others before him, rather than left unexerted till so late a day.

Truth is generally found in simplicity. Mystery and authoritative assertion may, indeed, be of service to error and to ignorance—to oppression and to deceit; they may, at certain periods, support a creed in religion, or an absurdity in law; nay, they may even consecrate an Inquisition, or form the outworks of a Bastille: but he would hope that the days of mystery and authoritative assertion are past. He has considered assertion as assertion; and cared not by whom such assertion was made; as he conceived that no man, however great he might be deemed, could plead exemption from what was just; or make right wrong, or wrong right. It was an observation of a noble person (though that noble person, perhaps, deserves but little to be quoted,) that few things were so *uncommon* as *common sense*: and certain it is that man frequently takes more pains to *reason* himself out of *rationality* than would have led him into the paths of truth.

The Author, therefore, has aimed at being explicit and concise; and if he should be so fortunate as to succeed in his endeavours to communicate information, however small the portion may be; if he should simplify the doctrines he has treated of; or remove one error from the many

which surround us, or induce another to do so; he shall think that his time and his labour have been profitably bestowed.

The present volume contains the DOCTRINE OF MANORS, GRANTS, SURRENDERS, ENTAILS, REMAINDERS, EXECUTORY INTERESTS AND TRUSTS, ADMISSION, FINES, FORFEITURES, EXTINGUISHMENT AND SUSPENSION, AND ENFRANCHISEMENT; which includes the nature, creation, transfer, and destruction of Copyhold Interests. If his health and professional engagements shall permit him, he intends to resume the subject, and give a second volume on COURTS, CUSTOMS, (comprehending the doctrine of FREEBENCH, CURTESY, DESCENTS, &c.) SERVICES, as HERIOTS, &c. &c. And as such second volume will, in many parts, relate more immediately to local matter than the present one, the communication of any curious entries, customs, &c. relative to particular manors, will be much esteemed.

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ON
COPYHOLDS.

CHAP. I.

OF MANORS.

FROM ages remote and rude have we de- Introductory
remarks.
rived many of the most important maxims
of our jurisprudence, and the radical, and,
perhaps, the purer principles of our polity.

But we are not to estimate either the civil or political constitution of a nation by its antiquity, but its wisdom. Many are the principles, both of polity and jurisprudence, which, as they are founded in nature, must continue through all periods invariably just; while there are others, of arbitrary imposition, flowing from a peculiar state of manners, or suggested by emergency, which.

it will, when that emergency has ceased, or the manners of a people are meliorated and refined, become the hand of wisdom to remove.

[2] If it becomes man to concentrate every energy in preserving the principles of rectitude and liberty, of national safety, and of individual peace, from being crushed by the strong and unrelenting hand of power, or withered by the blasting breath of an all-contaminating corruption, it should also be his care to prevent their being frustrated and supplanted by a narrow adherence to arbitrary rules : he should cherish those principles which ought never to die, and he should suffer those to die which were never intended to live.

If the radical principles of our legal or political system partake of the barbarity, they partake also of the liberty, of earlier times. The arm of the savage, which repelled an outward enemy, was lifted against an internal foe. He who had but few wants, had consequently but little dependency ; and, by being jealous of the power of others, he learned to preserve his own.

We too generally associate the ideas of tyranny and oppression, of despotism and slavery, with those of the feudal system. But the feudal system originated in freedom ; and that system was corrupted when it ceased to be free (a). The feudal system.

Although admirably calculated for individual freedom and for national strength, it was, like other ancient systems, calculated more immediately for war. Inimical to commerce and the arts ; incompatible with the progress of improvement in after ages ; many of its principles became gradually obsolete, and were lost : but laws founded on those principles were permitted to continue when the principles on which they were founded were forgotten or condemned.

[3]

Hence, many of our usages and laws appear arbitrary and needless, of uncertain import, or of capricious imposition, to those, who, regarding them merely as existing rules, are unmindful of the times in which their

(a) See *Watk. Introd. on the Feudal System*, prefixed to *Gilb. Ten. Watk. on Desc.* ch. 1. s. 1. p. 7. n. (h) and ch. 3. s. 1.

principles were suggested, and of the policy which gave them birth. But to the history and manners of the times must we recur, to illustrate those laws which were ordained in ages that are past, and those customs to which we have succeeded, as it were, by inheritance; to trace out their origin and mutation, the principles whereon they were founded, and their relation to the general system of our legal polity.

The principles
of our laws
derived from
it.

That our legal system, as it is relative to property, is derived from that which is usually denominated the feudal, and that the feudal system owed its origin to the Gothic tribes, seems sufficiently evident (*b*).

Its origin and
progress.

In rude ages the individual is generally found to be free. The nation is an aggregate of freemen, associated for general protection and defence; though each has a kind of individual independency each forms a part of a great whole: each is amenable to society, and each is a composite portion of the state.

(*b*) See *Watk.* ubi supra.

Man is guided by facts before he reasons abstractedly. Authority over individuals, and property in the soil they inhabited, were not to be vested in this or in that individual, but in the society which the aggregate formed. Property and power, therefore, were lodged in society; but society was an abstract idea. It was, consequently, requisite that society should be *represented*; and hence arose the chief political person of the state (c). As society was entered into for general defence and individual protection, some one was necessary to lead forth armies, to administer justice, and to apportion lands. [4]

The king was the representative of society.

But in early times, a nation frequently consisted not only of an aggregate of individuals, but also of an aggregate of smaller states: it was composed of an assemblage of families or tribes: it was a federal union of originally independent clans; each of which continued distinct, though their unity formed the state.

(c) See *Watk. on Descents*, c. 1. s. 1. p. 7. n. (l). c. 3. s. 1. p. 92, &c. *Reflect. on Gov.* s. 5. p. 66, &c. and on the *Feudal System*, pref. to *Gilb. Ten.* &c.

And the lord
of his clan.

[5]

Each horde or clan, notwithstanding its union with others, was, as far as related to the persons composing it, in itself a nation. It had its representative, who conducted the people to war, and who administered justice among them in peace. He frequently succeeded by inheritance (*d*); not indeed by right, but by custom; for most of these clans were families derived from a common parent, in which the paternal authority was not perhaps wholly effaced. But, when several tribes, originally independent on each other, confederated and composed a general society, the representative of that society, whether its powers were to be vested in an individual, or delegated in portions to many, must necessarily have been chosen by the united clans.

When the northern nations abandoned their native plains, and over-ran, and, at length, settled on the ruins of the Roman power, these principles and usages were observed. The great chief of the united

(*d*) Vide *Tacit. de Moribus Germ.* c. 7. And see *Sulliv. sect. 3. p. 27, 8. Watk. Reflect. on Gov. 66.*

states was the generalissimo of the emigrating army ; and each clan or family was marched under the banners, and afterwards settled under the protection of its respective chieftain or lord.

On a country or district being conquered, the confederated tribes composing the general army, or the confederated barons or individuals who composed an invading and adventuring party under the direction of their original or elected (e) chief, became entitled to their portion of the spoil.

The victorious army, or party of adventurers, however numerous or however few the component individuals, was a social and connected body ; and its representative was its conducting chief. The conquered district was the property of the social body ; and, on its division, each person entitled held his allotted portion of the state. The chief

Division of
lands.

[6]

(e) *Boulainvilliers Etat. de la France*, tom. 1. *Mem. Histor.* 15. *Lacombé Abregé Chronologique de l'Histoire du Nord*, *Hist. de Dannemarc*, an. 772. tom. 1. p. 49. *Watk. on Desc.* c. 3. s. 1. p. 94.

Tenants in
capite.

Mesne lords.

represented that state; and the individual held his portion of his chief. The first division was to be among the clans, or, in the case of small parties, among the individual adventurers, under certain services; and these portions allotted were held immediately of the state: the persons to whom they were allotted were the tenants *in capite* of after-days. The portion of country assigned to a clan, was, in the same manner, vested in the leader or chieftain of such clan: these chieftains were the barons of the state. Each of these portioned out the allotment he received among his immediate followers; who also divided parts of their shares to others who were dependent immediately on them. These inferior chiefs were those who afterwards were denominated the *mesne* lords.

Demesnes.

What remained unallotted by the king, or the respective chieftains or lords, was said to be in his *demesne*, or in his immediate possession and use. These demesnes, if not suffered to lie waste, were cultivated by his own servants, or granted out in small allotments to persons who, not being freemen, had no title to a share on the former

division ; and these allotments were resumable at his pleasure ; for so dependent and servile was their state, being mostly the captivated natives of the countries which were over-ran (*f*), that they were not only incapable of a durable property, but were themselves considered as the property of their lord. In after-times, indeed, many who were free in their persons accepted these gifts under services denominated *vil-lein* or base services ; but these were frequently such as were expelled from their free possessions by the strong hand of turbulence and oppression, and driven by necessity to accept what, in better days, would have been considered as derogatory to a freeman (*g*).

[7]

Thus part of the portion allotted to the king or lord, was held by his followers in frank-tenure, under certain services and returns, and part remained in his hands, either waste, or cultivated by his villeins or meaner

(*f*) And see *Britt.* cap. 31. *de Naifte.*

(*g*) *Bract.* Tr. 1 lib. 4. c. 28. s. 5. *Fleta*, lib. 1. c. 8. s. 2. *Britt.* c. 66. *Fitzh. Abr. Prescript.* pl. 29.

Manors.

dependants. The whole territory of the lord was denominated his manor or barony, his honour or lordship, according to the language of the day.

Etymology
of the term.

Many and discordant have been the conjectures on the etymology of the term *manor* (*h*). But that which appears the most just is, that the term is derived from the French *mesner*, which signifies to govern, or to guide; because the lord of a manor has the guidance and direction of all his tenants within the limits of his territory: "and this," says Sir Edward Coke, "I hold the most probable etymology, and most agreeing with the nature of a manor; for a manor in these days signifies the jurisdiction and royalty incorporate, rather than the land or scite (*i*)."

[8]

(*h*) See *Spelm. Gloss. voce Manerium. Cowell v. Manor. Co. Copyh. s. 31. Tr. p. 51-2. Boulainvil. Etat. de la France, tom. 1. p. 41. Whit. Manch. b. 1. c. 8. s. 3.*

(*i*) *Co. Copyh. s. 41. p. 52.* Thus the term *manorhood* occurs in old custumals, especially in those of the north, and is used in this sense: "And he further saith that the privileges of the game, of fishing, fowling, hawking, and hunting within the said forest and park, (of *Stanhope*) with the manorhood of the inhabitants

This etymology most certainly accords with the nature of the thing. The chief, or prince, in most ages and nations, possessed the civil with the military power. The baron led his tenants to war, and he administered justice among them in peace. His jurisdiction was commensurate with his territory. His tenants assembled in his hall, where justice and equity were dispensed. This court, called the hallmote (*k*) from the place in which it was held, or the court-baron, from the territory to which it belonged, was absolutely incident to the manor. It was of its very essence: it appertained to it of necessity. It was inseparable from the barony; which could not even exist without it. And the *suit of court*, or the obligation of attendance, was also inseparably incident to the feud.

In this court the suitors were judges (*l*): the freeman could only be tried by his

[9]
Trial by peers.

within the parish of Stanhope, belong to the bishop of Durham's forrester for the time being." Deposition relative to the customs of Weardale in Durham, A. D. 1595.

(*k*) See *Spelm. Gloss.* voce Halmote, and 4 *Inst.* 268.

(*l*) *Co. Lit.* 58. b. 4 *Inst.* 268.

peers(*m*), his equals, his fellow frank-tenants. Hence, if the lord had no tenants, by reason of escheat, or the like, he had none over whom to exercise jurisdiction. If he had but one tenant, that one, having no peer, had no judge; and consequently he appealed to the court of the lord immediately above. Hence we find in our books, that if there are not two frank-suitors at the least (*n*), the court-baron cannot be held, and consequently that the manor is destroyed. But it should seem that there must be *more* than two frank-tenants holding of the manor to enable the lord to hold a court *; for otherwise, if one of those two was the plaintiff, and the other of those two the defendant, the lord would be under

(*m*) *Magna Carta*, c. 29. Vide *Lindembrogius Cod. Leg. Antiq.* 679. *Ll. Longob. Tit.* 8, and *Spelm. Gloss. voce Pares Curie & Parium Judicium*.

(*n*) *Bro. Court. Bar.* pl. 22. *Comprise*, pl. 31. *Kitch.* 4. a. 3 *Durnf. and East*, 445. *Glover v. Lane*, 2 *Ld. Raym.* 863-4. *Tonkin v. Croker*.

* There must be twelve to try issues. See *Kitch.* 113. a. and b. *Co. Lit.* 155. a. n. (3). *Cro. Car.* 259. 1 *Roll. Abr.* 564. *Customs.* I. pl. 17. *Tr.* 17 *Edw.* 3. pl. 40. f. 44. a.

some difficulty to try them by *their peers* (o). Upon the continent, indeed, at a certain period, the lord who had not a sufficient number of peers for the purpose might have borrowed or hired a few of the lord paramount (p); but as he could not compel the peers he had borrowed to give judgment, it seems that the circumstance stood him but in little stead. Hence, perhaps, the practice so soon declined.

[10]

If the party was dissatisfied with the judgment of his peers he might have appealed them; that is, he might have fought

(o) The truth seems to be that there should be so many frank-tenants, as, in case of an action, to leave a plurality of suitors to sit as judges in the cause. There is an instance in the register, f. 11 b. and 12 b. of a cause being removed out of a court-baron, by reason of there being but four* suitors there. See the register, *ubi sup.* and *Bro. cause, a remover plee, &c.* pl. 35; and see also *Britt. cap. 120. de Court de Baron*, f. 274. b. 275. a. T. 17 *Edw. 3.* pl. 40 f. 44. a.

(p) *Montesq. Esp. des Loix*, liv. 28. c. 27, &c.

* In the manor of Dymock, in the county of Gloucester, there must be *three* benchers of the free-suitors at the least, or no court can be holden: and this by ancient custom. See *Appendix No. I Customs of Dymock.*

them; he might have dared them to the combat, and appealed to the decision of Heaven. If he did not appeal till judgment was pronounced he was obliged to fight the whole bench (*p*). And it is observable that their sense of honour, and of their own importance and independency was such, that the lord could not (and cannot even now, in this nation, unless warranted by custom) (*q*), compel the free-suitors, as between party and party, to be sworn: this would have been to call their honour in question*. Hence, perhaps, the suitors in a court-baron are called the *homage*, or *homagers*, or *benchers*, and not the *jury*, to this day.

Customary
court.

Again, the lord had a court for his villeins (*r*), who held at his will by copy: for

(*p*) *Montesq. Esp. des Loix*, liv. 28. c. 27, &c.

(*q*) 2 *Inst.* 142. *Bro. Court Bar.* 2, and 23. See also stat. 52 *Hen.* 3. cap. 22; and compare with 2 *Inst.* 49. a. and *Mag. Cart.* c. 29, and ante p. [9.] (*m*).

* So the *peers of the realm* are not sworn in giving judgment at this day. 2 *Inst.* 49.

(*r*) The *court-baron* is frequently called by *Britton*, and other ancient writers, "*la court des francks homes*,"

[11]

the suitors in the court-baron could not notice the claims of the villeins, who were of a different order of men. In the court of the copyholders, or customary court, as it was frequently called, were all matters relative to the tenements held by copy transacted. But the copyholders, not being originally free in their persons, nor holding by frank-tenure, were not entitled to be tried by their peers. The lord himself, or his steward who sat for him, was the judge of their court(s): they were his villeins, and dependent on his will. As they were beholden to his favour for their lands, so he might have resumed those lands at his pleasure. To this court, however, the copyholders owed suit, as the free tenants did to the court-baron; and, like the latter, were denominated the homage: not indeed that the copyholder ever did homage expressly,

or the court of the *free-men*; (See *Britt.* cap. 120, fol. 275, a.) as contradistinguished from the customary court, or the court of villeins. "The court-baron, *id est*, the court of the freeholders." *Dugd. Origines*, ca. 9. p. 25. See also 4 Co. 26. b. *Co. Lit.* 58. a.

(s) *Co. Lit.* 58. b. See *Watk.* No. lxxxviii, lxxxix, cxi. to *Gilb. Ten.* p. 432, &c. 447, &c.

as the frank-tenant did, on acceding to the tenancy; for homage could only be done by a freeman. For to what purpose could it be to make the copyholder say, "I become your man from this time forth," when he was the lord's man already by reason of his villeinage; And in after-days, when those who were free in their persons accepted lands to be held by copy, they were still only tenants *at will*. It should seem, therefore, that they were so called in the customary court by way of analogy to the homage in a court-baron, and that the term was derived from the latter court.

[12] Having thus cursorily remarked on the origin of manors, we may proceed to inquire into the possibility of their creation at this day; and into the means by which they may be divided, suspended, or destroyed.

Creation of
manors.

With respect to the first branch of our inquiry, it is very generally laid down as law, that a manor cannot be now created (*t*).

(*t*) *Bro. Comprise*, 31. 2 *Roll. Abr.* 120. *Manor* (A). *Kitch.* 4. a. 2 *Bl. Com.* 92. ch. 6. *Cro. Eliz.* 38. *Morris v. Smith*.

By the statute of *quia emptores terrarum* (u), the tenants of common lords were prohibited from granting any part of their lands in fee, to be held of themselves; but whether they aliened the whole or a part, (for that act enabled them to alien the whole,) the feoffee was to hold immediately of the lord above.

However, the statute of *quia emptores* did not extend to the tenants *in capite* of the king; and consequently it should seem, from the statute *de prerogativa regis* (w), that they might have aliened part of their lands, even without licence, and, from what appears, to have been held of themselves, till the 17th of Edward the Second; so that sufficient was left to answer the services due: but yet the statute 34 Ed. III. c. 15, was afterwards enacted, confirming the grants made by such tenants in the time of Henry the Third, but saving the prerogative of the king, of the times of his grandfather, his father, and of his own time.

[13]

(u) 18 Ed. 1. Westm. 3.

(w) 17 Ed. 2. st. 1. cap. 6.

Now the statute of *quia emptores terrarum* is expressly confined to alienations in fee-simple (*x*). And it is acknowledged, that if a person at this day, seised in fee-simple, give lands to another in tail, or for life, the donee in tail or grantee for life shall hold of the donor (*y*). Here then is a tenure confessedly created. If a person seised in fee-simple of a thousand acres of land which are held by him of a single lord, should grant out certain portions of such land to twenty persons for life, which he certainly would be warranted in doing, it may be asked, would he not have a manor? The grantees are *his* tenants; they are not tenants to the lord above. In answer to this, it is said (*z*) that though he may create a tenure, he cannot create a manor: for a manor cannot be without a court; and a court cannot be but by continuance time out of mind. But, says

(*x*) "Et sciendum est quod istud statutum tenet locum de terris venditis tenendis in *feodo simpliciter tantum*." Cap. 3.

(*y*) *Lit. s.* 19. *Co. Lit.* 23. a. 143. a. *Perk. s.* 637. *Fitzh. Abr. tit. Acowrie*, pl. 31.

(*z*) *Bro. Comprise.* pl. 31. & *Roll. Abr. Manor*, (F), f. 121-2. &c.

Sir Martin Wright (*a*), it is an obvious objection to this reasoning, that the like reasoning might have prevented any manors at all. And another objection to this reasoning is, that if it be absolutely necessary that a court should have existed time out of mind, the manor to which that court belonged must necessarily have existed time out of mind also; and if so, what becomes of the doctrine that manors might have been created by a tenant of a common lord till the statute of *quia emptores*, or by a tenant *in capite* of the king till the 34th of Edward the Third?

[14]

For the truth seems to be, from the very nature of the thing, as well as from historical facts, that the court was dependent upon the manor, and not the manor upon the court. The manor was the principal; the court was only an incident. On the creation of a manor the court-baron followed of necessity.

With respect to the tenant *in capite*, was the stat. 34 *Ed.* 3, a repeal, *ex necessitate*, of the sixth chapter of the statute *de prero-*

(*a*) *Ten.* 158, 9. n. (*h*).

gativa regis? Upon the supposition that it was, it does not follow that the tenant *in capite* might not have aliened *with licence*. Even the statute *quia emptores* might, it is said (*b*), have been dispensed with by the lord: and the king was within that statute when the lands aliened under it were held of him *in capite ut de honore* (*c*), though he was not bound when they were held *in capite ut de corona* (*d*). It does not, therefore, seem to follow of necessity that the creation of manors must have ceased in the reign of *Edward* the first. For though it is true that it is essential to a manor that there be tenants who hold of the lord, yet the position, that, by the operation of the statutes we have cited, no tenant *in capite* since the accession of *Edward* the first, and no tenant of a common lord since the statute of *quia emptores*, can create any new tenants to hold of

(*b*) See *Bro. Ten.* pl. 2. *F. N. B.* 211. [I.]

(*c*) *Wright's Ten.* 162.

(*d*) See *Gilb. Ten.* 52. and *Watk.* n. (*i*). King, &c. might licence to alien, and so a tenure be created. *Bro. Ten.* 65. which refers to *F. N. B.* 211. [I.] which see. Licence was granted by Queen Eliz. to Henry Neville, to alien lands in Mayfield to be held of himself.

himself (e), appears diametrically contrary to fact: unless, indeed, we suppose that it be absolutely essential to the very existence of a manor that the tenants should be tenants in fee: the necessity of which the whole history of feuds and the present system of copyholds seem most completely to negative. But granting even that the tenants must necessarily have held in fee, it appears that the tenant *in capite* might have aliened in fee *with* licence after the passing of the latter act *.

[15]

However, as our immediate consideration of the creation and progress of manors is relative more particularly to the doctrine of copyholds, it may suffice, without attempting to reconcile each position with principle, to remark that it should seem to be laid down as law, in a way not now to be disputed, that no such manor can, at this day, be created, *of which a copyhold can be held*. A copyhold must be held "according to the custom of the manor," and a custom, it is

(e) See 2 Bl. Comm. 92. ch. 6.

* Vid. *supr.* note (d).

[16]

said, must be from time whereof the memory of man is not to the contrary. Though a person, therefore, may, at this day, create a tenancy, yet he cannot at this day create a custom : and if he cannot at this day create a custom, he cannot at this day create a manor of which copyholds may be held *. A copy-

* The efficient cause of a manor is expressed in these words,—*of long continuance*. Hence it is, that the king himself cannot create a perfect manor at this day : for such things as receive their perfection by the continuance of time, come not within the compass of a king's prerogative ; and, therefore, the king cannot grant freehold to hold by copy, neither can the king create any new custom, nor do any thing that amounteth to the creation of a new custom. *Co. Copyh. s. 31. Tr. 45, &c.* And as the king can do nothing which amounteth to the creation of a new custom, so a common person can do nothing which amounteth to the creation of a new tenure. p. 47. He then distinguishes between a perfect tenure (or fee simple,) and an imperfect one, (or for life, &c.) 48; and so on to the circumstance of the court-baron, 49. Grant of a manor, see *Hob. 170*. A manor lying in three vills,—grant of in two vills,—that which is in the third vill will not pass. See *Brooke, Grant, 88.* and *Done, 26. Q^r*: What becomes of the proper manor ? Shall the grantee have it ; or, shall it remain to the grantor ; or, is it *extinguished* as to the two vills granted ?

hold cannot be granted "according to a custom" which does not exist.

And wherefore, it may be asked, then urge these objections to the propriety and justice of a doctrine which it would be needless to combat? To remind the student that it is his duty to think and to reason for himself. That if he implicitly acquiesces in what is absurd or unintelligible, he adopts it, and makes it his own; but that, if after investigation he is obliged to submit, he should regard it as the absurdity of others which he is not to answer for, but to mark.

The law relative to the *division* of a manor Division of
manors. seems to be involved in still more uncertainty and doubt.

Before the statute of *quia emptores terrarum*, as a manor might have been created, so it might have been divided; and the number of manors of consequence, increased (*f*). But if, according to the doctrine before noticed, a manor could not have been created since the

(*f*) Vide *M. 8 Ed. 2. f. 250. Mayn. Kitch. 4. a.*

passing of that act, by a tenant of a common lord, it should seem to follow, that, since the passing of that act a manor cannot be divided into separate manors, by the tenant of a common lord, as such division would be a multiplication in effect*. However, a distinction has very properly been made between a division by act of law, and a division by act of the party.

[17] It appears to have been acknowledged by the ancient books (*g*), and often recognized by later authors (*h*), that a manor might have

* And, as a manor cannot be divided, by the act of the party, into two, so two manors cannot be united into one. *Co. Copyh.* s. 31. *Tr.* 47-8. and see *Plowd. Quæries*, Q^r. 65. Grant of the manor of *A.* except lands in *B.*: the copyholds in *B.* cannot be granted by the owner of the lands in *B.*, there being no manor of *B.* *Cro. Eliz.* 442. *Bright v. Forth.* "A manor cannot be severed." *Per Glanville, Cro. Eliz.* 443.

(*g*) *M.* 17 *Ed.* 3. pl. 102. f. 72. b. *Pasch.* 9 *Ed.* 4. pl. 18. f. 5. a. *Trin.* 12 *Hen.* 4. pl. 13. f. 25. b. *Mich.* 11 *Hen.* 6. pl. 10. f. 26. a. *Trin.* 26 *Hen.* 8. pl. 15. f. 4. a; and vide *Mad. Baronia Anglica*, b. 1. c. 3. p. 39. 59.

(*h*) 4 *Co.* 26. b 6 *Co.* 64. a. &c.

been divided, subsequently to the statute *quia emptores*, by *act of law*. As, if a manor descended to several coparceners, and such coparceners made partition, each should have had a manor, in case part of the demesnes and services were allotted to one and part to the other (*i*). But though the *manor* might have been divided, the *tenancy* could not have been so; as, if a tenant held by rent and certain other services, and the coparceners, on partition, apportioned the rent and services, neither could have avowed without the other (*k*).

With respect, indeed, to joint-tenants, it is said that the manor shall not be divided as in cases of parceners; as joint-tenants come in by purchase (*l*); though *Anderson* thought there was no difference between them (*m*).

(*i*) Vide *Trin.* 26 Hen. 8. pl. 15. f. 4. a. &c. as in (*g*).

(*k*) *Mich.* 17 *Ed.* 3. pl. 102. f. 72. b.

(*l*) *Cra. Eliz.* 39. per Periam J. in *Morris v. Smith & Paget*, and 1 Leon. 27. S. C.

(*m*) 1 Leon. 28.

[18]]

But whether a manor can be divided by *the act of the party* does not appear to be by any means settled. Most of the ancient cases are relative to acts of law ; and most of the modern ones are deductions from them. In *Sir Moyle Finch's case* (a), a distinction was taken between acts of law and of the party : and Sir Edward Coke affirms, in a note to *Melwich's case* (o), that a lord cannot by his own act make of one and the same manor, at the common law, sundry manors consisting of demesnes and freeholders*. There is, however, a great contrariety of opinion on this point, as may be seen in the books cited in the margin (p). To reconcile these, would be a task of

(a) 6 Co. 63. a.

(o) 4 Co. 26. b. and see *Gilb. Ten.* 210-12. and 6 Co. 63. a.

* Manor of C. extending over C. and C.—Recovery of the manor, excepting the lands in B. and in B. were copyholds, demesnes, and services;—resolved, that copyholds could not afterwards be granted in B. See *Cro. Eliz.* 442. *Bright v. Forth.*

(p) *Gilb. Ten.* 210-12. *Cro. Eliz.* 19. *Harris & Haies v. Nicholls*, *ibid.* 38. *Morris v. Smith & Paget*, 1 Leon. 36. *Marsh & Smith*, *Cro. Eliz.* 300. 4 Co. 26. b. 6 Co. 63. a. &c. and see 15 *Viner*, 223. *Manor* (G.)

no small difficulty. But I must confess that none of the ancient cases that I am aware of, many of which are so generally referred to, by any means amount, in my conception, to warrant the doctrine that a manor *may* be divided by *the act of the party*; and the inconveniency, if not the nature of the thing, militates, I think, strongly against the adoption of such a doctrine.

If the lord grant the freehold and inheritance of *all* the copyholds within his manor to a stranger in fee, it is said (*q*) that the grantee may keep a customary court, and regrant the copyholds in case of escheat, &c. For this, say they, is only the division of the courts; and the legal manor remains in the original lord.

Separation of the customary part of a manor from the free.

But a doctrine like this is justly questionable, and perhaps, on investigation, it will appear not only incompatible with principle, but even destitute of authority itself.

[19]

(*q*) 4 Co. 26. *Metwicks*' case.

It was acknowledged, in the cases of *Murrel* and *Smith* (*r*), and *Melwich* and *Luter* (*s*), that, by the grant, the copyholds were severed from the manor. To have permitted the act of the lord to destroy the interest of his copyholders would certainly have been unjust: and it would have been inconsistent with the very grant that the copyhold interest should be turned into freehold, as the freehold was the subject of the grant. But surely, it must be evidently repugnant to undeniable principles, to say that the grantee of the inheritance should, in case of escheat, or the like, be warranted in granting the premises by copy again. A copyhold must, in its very nature, be *within* and *parcel of* a manor, and held at the will of the lord, according to the custom of the manor of which it is so held. On a re-grant, in the present case, therefore, *within* what manor shall the premises be deemed? What manor are they to be parcel of? According to what custom are they to be held? By the conveyance of the freehold they were severed from the ori-

(*r*) 4 Co. 24. b. Cro. Elix. 252.

(*s*) 4 Co. 26. a. Cro. Elix. 102.

ginal manor ; they were no longer within or parcel of *that* manor ; nor can they be held according to the custom of that manor of which they have ceased to be held at all. The grantee of the inheritance of the freehold must hold of the lord above ; but the copyholders must hold of the grantee. The copyholds, therefore, on a re-grant, could not be held according to the custom of the manor paramount ; and it should consequently seem that they could not be re-granted by copy at all.

[20]

And if we look into authorities, the doctrine appears equally destitute of support. If the lord grant the inheritance of *one* copyhold only, it is acknowledged that the grantee cannot hold a court ; nor grant the land as copyhold again (*t*). And in the case of *Neale and Jackson* (*u*), the grant was only of a chattel interest ; and, consequently, not within the statute of *quia emptores terrarum*. And, in the instance of the grant of the freehold and inheritance of *all* the copy-

(*t*) 4 Co. 24. b. *Murrel & Smith*. 4 Co. 27. a.

(*u*) 4 Co. 26. b. *Cro. Eliz.* 395.

holds in the manor, the only case I can find (w) which countenances the doctrine, seems to have been denied by the justices on a writ of error being brought in the Exchequer Chamber : for, although the matter was compounded, the decision in B. R. was given up as insupportable ; and the judgment declared to be “ a strange judgment,” never entered up by the direction of the court ; and all the justices and barons in the Exchequer Chamber held clearly that the grant by copy, by the grantee of the freehold, was void (x).

[21]
Suspension of
a manor.

A manor may be suspended for a time and revive again : as where the lord leases all the demesnes of the manor for years ; the manor, during the existence of the lease, is suspended ; but on the expiration of the term, it shall revive (y). So, if a manor descend to two parceners, and, on partition, the services be allotted to one, and the demesnes (z) to the other, and the one die, the manor shall

(w) *Melwich & Luter*, 4 Co. 26. a.

(x) *Cro. Eliz.* 103-4. and 443.

(y) 1 *Leon.* 27-8. cited as so adjudged.

(z) *Trin.* 12 *Hen.* 4. pl. 13. f. 25. b. *Mich.* 18 *Hen.* 6. pl. 10. f. 26. a.

revive ; for it was suspended only, and not destroyed (*a*).

Our next inquiry is into the means of destruction : and, in the first place, as a manor must consist of demesnes and services, we may observe that whenever they become absolutely separated, so as to be incapable of uniting again, the manor no longer continues a manor in reality (*b*), though it may in reputation ; or, in other terms, it would cease to be a legal manor, though it may still be a seignior in gross (*c*).

Destruction of
a manor.

(*a*) See 12 *Hen.* 4. and 18 *Hen.* 6. as before ; and 6 *Co.* 64. a. 2 *Rol. Abr.* 122. *Manor* (F) pl. 3. and (H) where the same cases are cited.

(*b*) See 2 *Rol. Abr.* 122. *Manor* (H). *Littl. Rep.* 128. and the cases before cited from the Year-books ; to which add *Trin.* 9 *Ed.* 4. pl. 17. f. 17. b. and 1 *And.* 257.

(*c*) See *F. N. B.* 3. C. [A man may have a manor in gross, (as the law termeth it,) that is, the right and interest of a court-baron, with the perquisites thereunto belonging, and another or others have every foot of the land. *Kitch.* 4. Certain minor prescriptive rights may also continue to belong to a manor, though rights of a higher nature, such as that of holding courts, &c. be gone and severed from it. 10 *East*, 259. *Soaxe v. Ireland et al.*]

[22] If the lord grant all the demesnes(*d*), or all the services(*e*) to a stranger; or if all the services become extinct(*f*), the manor will be destroyed.

We have already seen that a court-baron is essential to a manor at law; and that there must be frank tenants who owe suit; if all the frank tenancies, therefore, escheat, or become forfeited, or purchased by the lord, the manor is properly at an end(*g*), though it may continue, in contemplation of law, as to certain purposes; as to preserve the right of wrecks and estrays, &c. (*h*). So if there be but one free tenant, the seigniorship as to him remains with respect to his services, &c. though there can be no court held(*i*).

(*d*) 6 Co. 63. a. Sir *Moyle Finch's* case.

(*e*) *Trin.* 9 *Ed.* 4. pl. 17. f. 17. b. and vide *Mich.* 17 *Ed.* 3. pl. 102. f. 72. b. and *Trin.* 12 *Hen.* 4. pl. 13. f. 25. b. and *Skin.* 661. in the case of *the King v. Bishop of Chester*.

(*f*) *Yelc.* 190. *The King v. Staverton*.

(*g*) *Bro. Comprise.* pl. 31. and ante. p. [9.] &c.

(*h*) *Calth.* 13. and vide *Trin.* 9 *Ed.* 4. pl. 17. f. 17. a. *Danby*. [Also 10 *East*, 259. *Soane v. Ireland et al.*]

(*i*) 1 *Anders.* 257. 2 *Lord Raym.* 864. If all the free-tenancies escheat, the lord may nevertheless hold court, &c. for the copyholders. See 4 Co. 26. b. *Melwich & Luter*, and *Calth.* 13.

CHAP. II.

OF GRANTS.

IN the preceding chapter we have seen that the lord allotted certain portions of his demesnes to be cultivated by the lower order of his dependants, who held them at his will, under services of a base and rustic nature, and such as, in the conception of those days, it became the villein to return. Those allotments, like the ancient feuds, were properly the lord's gifts in recompense of acknowledged fidelity, and in consideration of future services.

[23]

Nature of a grant.

We may therefore define a grant to be, “ a Defined.
gift of the lord to another person of a certain portion of his demesnes, to be held by copy of Court Roll, at the will of the lord, according to the custom of the manor, under the usual services and returns.”

And, first, it is “a *gift* :”—and this the very term implies. Even feuds held by frank tenure were originally *gifts* : hence were they denominated *munera*, *beneficia*, and *feuda* ; and the terms still used in feoffments are those of “give and grant ;” *do* and *dedi* being regarded as the most apt and proper in that species of conveyance (*k*).

[24] And when we consider that copyholders were originally of so servile and base a class of men, and that they held their tenements strictly at will, we must necessarily regard those tenements as primarily derived from the munificence of the lord, as they continued to be even afterwards held at his pleasure.

Hence too, even at this day, a copyholder may, in pleading, allege any admittance, either upon a descent or surrender, as an immediate *grant* from the lord (*l*).

(*k*) See *Co. Lit.* 9. a. and *Watk.* No. II. to *Gilb. Ten.* 1. a.

(*l*) *Cro. Jac.* 103. *Pyster v. Hemling.* 4 *Co.* 22. b. *Brown's case.* [If, however, a person be admitted tenant upon a mistaken claim, under which it turns out that he has no title, he cannot recover in ejectment

Secondly, a copyhold “ is the gift of the lord.” And here we may inquire into the capacity of the lord to grant. Who may grant.

In voluntary grants, says Sir Edward Coke, which are made by the lord himself, the law neither respects the quality of his person, nor the quantity of his estate: for be he an infant, Infant, &c. and so through the tenderness of his age insufficient to dispose of any land at the common law; or *non compos mentis*, an idiot, or a lunatic (*m*), and so for want of common reason unable to traffick in the world; or an outlaw

by virtue of such admission, as upon a new and substantive grant from the lord. See 7 *East*, 186. *Zouch v. Forse*. And *per* LORD ELLENBOROUGH, C. J. “ an admittance to a copyhold does not in itself constitute a possession; it only gives the party the means of possession if he have a good title to it.” *Ibid.* 192. Admittance merely clothes a person with a legal title to the possession, if he had before a title to the estate pursuant to the surrender; but it does no more; it will not give him a title. *Ibid.* 8.]

(*m*) His *committee* cannot grant; though, in *Blewit's* case, the court ordered that the steward should apprize the committee, and the court also, of his intention to grant by copy; but this was a matter of discretion, and not of right. *Ley.* 47–8. and 6 *Vin.* 17. *Copyh.* (G.) pl. 15.

in any personal action, and so excluded from the protection of the law, or an excommunicate, &c. yet he is capable enough to make a voluntary grant by copy.

[25]
A person having a particular interest only.

And the quantity of the lord's estate is no more respected than the quality of his person : for if his interest be lawful, be his estate never so great or never so little, it is not material : for be it in fee, or be it in tail, or dower *, or as tenant by curtesy, for life or for years, as guardian †, or as tenant by statute, or as tenant by *elegit*, or at will ‡, the least of these estates is a sufficient warrant to the lord to grant §

* Dower:—If a widow sue for her dower in one hundred messuages, &c. not naming the *manor*, she cannot grant, because she has no manor. *Gouldsb.* 37. pl. 11. *Brook's case*.

† *Owen*, 115. *Cro. Jac.* 98. Guardian taking Husband. See *Plowd.* 293. *Osborn v. Carden*.

‡ Tenant by Sufferance. *Owen*, 28–9.

§ But a *contract* or *agreement* to grant, shall not be carried into execution against the lord in remainder. 1 *Vern.* 472. *Awbry v. Keen*. [“ If tenant for life of a manor, having a power to grant, *covenant* to make such grant, that would in equity bind the remainderman; being in the nature of the execution of a power.” *Per* the LORD CHANCELLOR, in *St. Paul v. Ld. Dudley & Ward*, 15 *Ves.* 167. So if a lord, tenant for life of

any copyhold escheated unto him, for as long time as the custom doth allow, the ancient rents and services being truly reserved; and these grants shall ever bind them that have the inheritance, or frank tenement of the manor(n). And the reason of the law is this: a copyholder upon voluntary grants made by copy, doth not derive his estate out of the lord's estate only, for then the copyholder's estate should cease when the lord's interest determines; *nam cessante primitivo, cessat derivativus*: but the life of the copyholder's estate is the custom of the manor; and, therefore, whatsoever befalls the lord's interest in his manor, be it determined by

a manor with remainders over, purchase a copyhold interest, and take a surrender thereof to him and his heirs, such copyhold interest will merge, and, as parcel of the manor, be subject to the limitations thereof; but if the lord so purchasing, not being aware of the merger, *covenant* to surrender such copyhold interest by way of mortgage, a court of equity will compel a regrant by the remainder-man. *Ibid.*]

(n) But, it has been said, that a lord having a particular estate, cannot grant a copyhold by parcels, or demise part and retain the residue himself. *Per Popham, Cro. Eliz. 662. in Gay v. Kay. Sed quære. See Co. Copyh. s. 41. Tr. 91. Cro. Eliz. 442.*

[26]

the course of time, by death, by forfeiture, or other means, yet, if the lord were *legitimus dominus pro tempore*, how small soever his estate was, that is enough ; for the same custom that fixes a copyholder instantly in his land upon his admittance, will likewise preserve and protect his interest to the end, in such manner that though the lord's interest fails, yet his shall never fall to the ground, being upheld by such a prop, such a pillar ; unless perchance the copyholder offer violence to his founder, in breaking the custom (o).

A person
seised in right
of his church.

So a bishop, prebendary, parson, &c. seised in right of churches, may grant by copy in fee ; if an estate in fee be warranted by the custom of the manor ; and it shall bind their successors ; and in the case of the bishop, such grant will be good even against the king on the vacancy of the see (p).

(o) *Co. Copyh.* s. 34. *Tr.* 67. &c. 4 *Co.* 23. b. *Clarke v. Pennyfather.*

(p) 4 *Co.* 21. b. in *Brown's* case, and the books cited, to which add *Trin.* 15 *Hen.* 7. pl. 13. fol. 10. a. 4 *Co.* 23. b. *Gilb. Ten.* 197.

So if a person be seised of a manor in right of his wife, he may, together with his wife, grant copyholds in fee, and it shall bind the wife and her heirs : but it is said, in the case of *Shopland* and *Ryoler* (*q*), that the husband cannot grant them in his own name ; but the wife must join in the grant.

A person
seised in right
of his wife.

But if there be two joint tenants of a manor, one only may grant, and it will be good against his companion ; for he was *dominus pro tempore*, and each was seised *per mie et per tout* (*r*).

Joint tenants.

If, therefore, a person have a lawful interest in the manor, at the time of the grant made, it is enough. The interest need not, we find, be any ways commensurate with the estate so granted by copy. Should the interest in the

Conditional
or defeasible
interest.

[27]

(*q*) *Cro. Jac.* 99. And note, on marriage, the freehold is in *both*. See *Post.* vol. 2. p. [152]. Sir Edward Coke, (*Compl. Co.* s. 34. Tr. 68.) speaking of husband and wife, seised in her right, says, " if *they both* join in a grant." *Sb* 4 *Co.* 23. b. Grant made by *Husb. and Wife*.

(*r*) See *Co. Copyh.* s. 34. Tr. p. 76. *Gillb. Ten.* 330. But see a *dictum* of Anderson *contra*, in 1 *Leon.* 234. 2 *Bl. Com.* 183.

manor be determined the moment after the grant be made, nay, if it be wholly and *ab initio* defeated, it matters not, provided the interest of the granting lord was a lawful interest at the time of the grant.

Thus, if a manor be granted upon condition, and before the condition be broken, the land be granted by copy, and then the manor become forfeited, and the feoffor enter; yet the copyhold estate will remain untouched, because lawfully established by custom *. If a man seised of a manor in fee die seised, having issue a daughter, and, his wife being *privement ensient* with a son, the daughter grant lands by copy; this grant shall stand good against the son, for the daughter was *legitima domina pro tempore*. So, if the feoffee of a manor upon condition to infeoff a stranger the next day, make a voluntary grant by copy, this shall bind: and yet his interest was to have but small continuance. If a manor be granted with a feme in frank marriage, and there be a divorce had, *causa præcontractus*, so that now the interest of the manor is granted to the feme only, and

* Owen, 28.

by relation the marriage is void *ab initio*; yet, because the baron was *legitimus dominus pro tempore*, any copyholder's estates granted before the divorce will remain good. So, if a man espouse a feme seignioress under the age of consent, and after she disagree; though the marriage by relation was void *ab initio*, yet copyholds granted before disagreement shall never be avoided; *causa qua supra*.

If the lord of a manor commit felony or murder, and process of outlawry be awarded against him, and after the exigent he grant copyhold estates, 'according to the custom, and then be attainted, these grants are valid, though by relation the manor was forfeited from the time of the exigent awarded. So, if the lord had been attainted by verdict or confession, any grant by copy after the felony or murder committed, shall stand good, notwithstanding the relation. If the lord of a manor acknowledge a statute, and then grant lands by copy, and after the manor be delivered to the cognisee in extent, the grant cannot by this be impeached (s).

Lord committing felony.

[28]

(s) *Co. Copyh.* s. 34. and post. [45.]

Dowress.

If the lord, after marriage, grant by copy and die, and his widow be endowed, yet the grants will be good against her: but if the heir, after the death of the husband and before endowment grant, it should seem that the widow may, on being endowed, avoid such grants of the heir (t).

A person having an unlawful interest.

[29]

But no grant can be good if made by a person having only a tortious or unlawful interest, as a disseisor, abater, or intruder, or even by the heir or feoffee of such disseisor, &c. or the discontinuee of a tenant in tail; or by a tenant by sufferance, as if a person seised *pur autre vie* of a manor grant by copy, after the death of *cestuy que vie*: in all these cases the grants would not be available against the persons having right (u).

Grants by the steward.

It is not, however, necessary, where the interest is lawful, that the lord should grant

(t) *Co. Copyh.* s. 34. *Tr.* p. 71. N. (6) to *Co. Lit.* 58. b. cites *Rous* and *Artois*.

(u) *Co. Copyh.* s. 34. *Co. Lit.* 58. b. 1 *Roll. Abr.* 499. *Copyhold* (C) pl. 2. *Rous* and *Artois*. 2 *Leon.* 45. *S. C. Gilb. Ten.* 198. &c.

in his own person. A steward, retained by patent in the case of the king (*w*), or even by word only in the case of the subject (*x*), may grant according to the custom of the manor, without the express direction or assent of his lord (*y*): though not in opposition to his positive commands (*z*).

But, in order to enable the steward to *grant*, it is not enough that he be steward *de facto*, he must have a lawful authority. In matters of necessity, indeed, or in which the person is merely an instrument, as in admittances on surrenders, the acts of a steward *de facto*, of only a reputed or ostensible authority, will be good; as the person taking under such act is not obligated to examine into his authority, and the person acting does that only which the lord himself would be compellable to do (*a*).

(*w*) 4 Co. 30. a. *Harris and Jay. Gilb. Ten.* 221.

But see stat. 1 Ann. st. 1. c. 7. sect. 5.

(*x*) Co. Copyh. s. 45, Tr. p. 104.

(*y*) *Harris and Jay, ubi sup. Gilb. Ten.* 221.

(*z*) Cro. Eliz. 699. *Harris and Jay.* Trustees may appoint a steward, 21 Vin. 512. Trust (Q) pl. 1.

(*a*) *Gilb. Ten.* 315. Cro. Eliz. 699.

Under steward,
&c.

[30]

So, an under or deputy steward may grant (*b*); and even such deputy may substitute or appoint another to do so (*c*). But, in case of the king, it is said that the steward must be expressly empowered by his patent to appoint a deputy, or the grant by such deputy will not be good (*d*).

Bailiff.

The bailiff of a manor cannot, as such, make a grant by copy ; for such a power does not appertain to his office, which was instituted for other purposes (*e*).

Grant out of
court.

And we may here remark that the lord or steward may grant as well out of court as in ; and it should seem, as a necessary consequence, out of the manor also : but it is said, that an under steward cannot grant out of court without a special authority or custom enabling him so to do. Yet *quære* as to this latter point (*f*).

(*b*) See *Moore*, 112. *Bro. Ten. per Copie*, pl. 26.

(*c*) See 1 *Leon.* 288. Lord *Dacre's* case; and see also 1 *Lord Raym.* 658.

(*d*) 4 *Co.* 30. a. b. *Harris and Jay*.

(*e*) *Gilb. Ten.* 204. *Cro. Jac.* 99. and *Owen*, 115.

(*f*) See *Watk.* No. cxi. to *Gilb. Ten.* 447. How-

Thirdly, it is the gift of the lord “to another person.” For the lord cannot grant to himself; nor can he hold of himself by copy: *nemo potest esse tenens et dominus*, was the established axiom of the distant day.

To whom a grant may be made.

The lord himself cannot be a grantee.

Lord Coke, indeed, tells us, that the lord himself may take a copyhold to his own use (g); but it is evident that he was then speaking of the lord's taking a *surrender* to his own use; for although the professed object of his chapter in which the cited passage is to be found, is to point out who may be *grantees*, yet in truth the greater part of that chapter is confined to the capacity of the *surrenderee*.

[31]

So, the lord cannot grant to his own wife; for she is not another person in the eye of the

Nor his wife.

ever, even admitting that an under steward has no authority in himself to make a grant, yet it should seem that any act of the lord, (he being apprized of such grant,) acknowledging the grantee as a tenant, would be a confirmation of such grant, or at least preclude the lord from rescinding or annulling it.

(g) *Co. Copyh.* s. 35. *Tr.* p. 79.

law : the husband and wife being but one person in legal estimation (*h*).

Nor a corporation.

Again; it should seem that the grant ought to be confined to a *person*; for it does not appear that a *corporation* can hold by copy. So the king cannot be a copyholder; not only in his corporate, but in his natural capacity; for it is below his majesty, says the law, to perform servile services (*i*): but, indeed, according to a doctrine long established, he cannot perform any services at all, since he can hold of none (*k*).

Nor an alien.

In Calthorpe (*l*) it is said that an alien may be a copyholder; but this, I conceive, is under the idea that a copyholder is strictly a tenant at *will*, which an alien may be;

(*h*) 2 *Wils.* 254. *Firebrass d. Symes v. Pennant.*

(*i*) 2 *Siderf.* 82. in *Field v. Boothsby*. [And see *infra*, p. 340-1.]

(*k*) *Co. Lit.* 1. b. *Dyer*, 2. b. pl. 8. in marg. and 154. b. pl. 18. Yet there are many instances of kings holding lands of a subject in ancient days. See 1 *Rob. Scotl.* 8. and *N. Stuart Diss. Antiq. Engl. Constit.* p. 3. s. 3. p. 160. N. (6.)

(*l*) p. 52.

but as a copyholder has ceased to be merely such, it is clear that an alien cannot hold by copy (*m*).

But, with respect to other persons, we may observe, generally, that those who are under no disability to take by grant at common law, are capable of taking by copy according to the custom of the manor (*n*). [32]

Fourthly, it is "a gift of the lord, &c. of a certain portion of his demesnes." What may be granted.

Nothing can be granted by copy which is Parcel of the manor.

(*m*) See *Dyer*, 2. b. in marg. 303. a. in margin, and *Alley's Rep.* 14. *Rex v. Holland*. Trust for an alien, see *Com. Dig.* Alien (c. 3.)

(*n*) *Co. Copyh.* s. 35. [Q^u. Whether an attainted felon, discharged by warrant under the sign manual, with a promise of pardon, but who does not appear to have received any regular pardon, be capable of taking a surrender and holding by copy; as also whether a lord be compellable to admit a surrenderee so circumstanced, or after having by admittance accepted him as a tenant, without being aware of any grounds of exception, be precluded from objecting to him at any future time? See 15 *East*, 463. *The King v. the Inhabitants of Haddenham*.]

not parcel of the manor (o). The copyholder held originally only at will; and the possession of the tenant at will was that of the lord. The tenements, therefore, which were held by copy were still considered as in the hands of the lord, and, consequently, as his demesnes (p).

Must lie in
tenure.

Again; nothing can, by the very terms, be granted to be held by copy, which does not lie in tenure; for what lies not in tenure cannot be *held*, as rents, bailiwicks, fairs, commons, and advowsons in gross, &c. (q).

Manor.

A manor, it is said, may be granted by copy; though this has been much question-

(o) *Co. Lit.* 58. b. 4 *Co.* 32. b. 24. b. See *Watk. Gilb. Ten.* 313. And see *ante*, ch. 1. p. [19].

(p) 2 *Roll. Rep.* 236. *Cro. Jac.* 559. *Pymmock v. Hilder*, 12 *Mod.* 147. *Winter v. Lovedurr*, 1 *Lord Raym.* 43, 4. *Brittel v. Bade*, and 1225. *Crowther v. Oldfield*, 1 *Salk.* 185. *Brittel v. Dade*.

(q) *Co. Copyh.* s. 42. *Co. Lit.* 58. b. See *Robins. Gav.* b. 1. c. 5. p. 79.

ed (r). In the *Year-Book*, M. 32 *Hen. VI.* pl. 16. fol. 9. b. it is affirmed that one manor may be parcel and held of another. But it may be asked, is not every manor that is not absolutely held in *capite* held of another manor? And, therefore, its being *held of another* does not seem conclusive as to the validity of a grant by copy. But as to the assertion that one manor may be *parcel* of another, we cannot help observing that such a doctrine appears subject to much objection; the manor held by copy, is held *at the will* of the lord above.

[33]

If, by length of time, indeed, such will is become nominal only, it can make no difference in the nature of the thing: it was originally strictly at will. Now the conception of one tenant at will demising *a manor* to another at will, seems rather extraordinary; as the tenants at the will of the latter would be subject to a double caprice (s). However,

(r) *Co. Lit.* 58. b. and N. (2.) and see *Cro. Jac.* 259. *The King v. Stanton*, *Gilb. Ten.* 215. 11 *Co.* 17. a. *Sir Henry Neville's case.*

(s) And see *Cro. Jac.* 260. *The King v. Stanton.*

several manors in the kingdom are said to be so held (*t*); and as it is not probable that any more should be so granted, the subject must be suffered to rest.

Tithes,
Underwood,
&c.

Tithes, it is said, may be granted by copy (*u*); and underwood (*w*), herbage, &c. (*x*).

(*t*) *Cro. Jac.* 327. *Moore v. Goodgame.* 11 *Co.* 17. a. S. C. under the name of Sir *Henry Nevil's*. And see *Year-Book M.* 32 *Hen.* 6. pl. 16. f. 9. b.

Aylesham in *Norfolk* is held by copy. See *Compl. Copyh. tit. Aylesham, &c.*

(*u*) See *Watk. Gilb. Ten.* 331. and n. (*h*).

(*w*) 4 *Co.* 31. a. *Hoe v. Taylor* [*Cro. Eliz.* 413. S. C.] and *Gilb. Ten.* 332. and *Watk. No.* clxxvi.

(*x*) See *Co. Copyh.* s. 42. *Viner. Copyh.* (E.) *Comyns. Copyh.* (C. 1.) [Without the soil. *Co. Lit.* 58. b. So one may hold the *prima tonsura* or "fore crop" of land as copyhold, and another may have the soil and every other beneficial enjoyment of it as freehold. And ancient admissions of the copyholder, and those under whom he claims the land, by the description of *tres acras prati*, may be construed to carry only the *prima tonsura*, if in fact they have enjoyed no more under such admissions, whilst another has had the after crop, and has cut the trees and fences, repaired the latter, scoured the ditches, and kept the drains, although the copyholder may have paid all rates and taxes. 7 *East*, 200. *Stammers v. Dixon.*]

But it is alleged that it is necessary, in order to support a grant by copy, that the thing granted must have been demised and demisable from time whereof the memory of man is not to the contrary; hence, say they, a grant of waste-land by copy, which was never granted by copy before, would not be good (y). Waste-lands.
[34]

Yet, if lands have been granted by copy for a number of years, as 60 or 80, and it cannot be shewn that they were not demisable before that time, the law will presume that they were regularly granted; and consider them as proper copyholds. But in this case, as Calthorpe says, it is not the number of years, but the memory of man, on which

(y) 1 *Leon.* 55. *Kemp and Carter.* 3 *Keble*, 124. *Bishop of London v. Rowe*, *Kitch.* 81. b. 2 *Wils.* 125. *Rowe d. Newman v. Newman*, 2 *Durnf. and East*, 415. *Revell v. Jodrell*, and see Lord Hale's note (a), to *F. N. B.* 14 *D.* which cites 21 *Ed.* 3. 56. Vide 21 *Ed.* 3. f. 56. a. *Mich.* pl. 5. [See also 2 *Barnew. & Ald.* 189. *The King v. The Inhabitants of Hornchurch.*] But those grants would be binding as to the lord who granted. See *Sheppard's Court-Keeper's Guide*, 121-2. where is a *quære* how such grant ought to be pleaded; whether as a grant by copy, or as a lease parol.

their nature as copyhold depends. Such a number of years would create a presumption ; but if it can be shewn that they were once not demisable, then such presumption must give place to proof (z).

[35] But we are told by Sir Edward Coke (a), that it is not of necessity that the lands must always have been actually *demised* time out of mind, by copy of court roll ; if they were *demisable*, said he, it is sufficient. If this then be law, what reason can be given why a grant by copy of waste-lands should not be good, if sufficient commonage be left for the other tenants ? It is acknowledged that if a copyhold escheat, and the lord keep it ever so many years in his hands, he may again grant it by copy ; and such grant will be good (b). Now, on the escheat, the former grant was utterly at an end ; and, if the lord may make a new grant (for a new grant

(z) *Calth.* 19. 54-55. and *Watk.* N. xc. to *Gillb. Ten.* 435. Note, 50 or 60 years sufficient to establish a copyhold. See 3 *Leon.* 107. *Taverner v. Cromwell.*

(a) *Co. Litt.* 58. b.

(b) *Co. Litt.* 58. b. 4 *Co.* 31. a. *French's case.*

it certainly would be) of the premises, why should he not grant any other part of his demesnes by copy?

The land formerly granted by copy was originally demesne land, equally with any other part of the waste(c). The grant of waste-land cannot interfere with the statute of *quia emptores terrarum* (d), for it is not within it; the copyholder holding only at will, and taking no estate at common law;—no portion of the tenancy.

In many manors in England a custom is urged as enabling the lord to grant portions of his waste-lands by copy, *with the assent of the homage* or of a certain number of them. And in the case of *Hughes v. Games* (e), such a custom was admitted to be good; and

(c) 2 Roll. Rep. 236. per Ley, C. J. and see *ante*, p. [32].

(d) 18 Ed. 1. West. 3.

(e) *Select Cases in Chanc. Temp. King.* c. 62. *Hughes v. Games*. In this case it was admitted that a lord, by custom, may make new grants of part of the manor to hold by copy; and a case was cited to that purpose. LORD CHANCELLOR:—In the case cited, such

a case was also cited in which it was said to be so determined ; and Lord Chancellor King there seems to have acknowledged the validity of such a custom (*f*), but said that the question in the case of *Hughes v. Games* was, whether there was a custom to do it

grants were made with consent of the homage; the question here is, whether there be a custom to do it without the homage? And that must go to law, and then it will be by them considered how far a custom to make such grants without the homage be a good custom. It was said Lord Chief Justice Pemberton had a copy in this manor. See also *Cas. Temp. Finch.* 263. *Lady Wentworth et al. v. Clay et al.* But note, it does not appear from the report of the case, that the ground to be set out by the homage, was to be granted to be held *by copy*; but it is said that the lady might, after such allowance by the homage, “grant leases and estates thereof at her pleasure, to be enclosed and kept in severalty, &c.” [Custom for the lord to grant leases of the waste of a manor without restriction, held bad in point of law. 3 *Barnew. & Ald.* 153. *Badger v. Ford.*]

(*f*) And the author has been informed, that in a case which came on in the Common Pleas, *De Grey C. J.* intimated an opinion that such a custom might be good; but the case went off on another ground. The custom was alleged as within the manor of Hampstead in Middlesex. See 5 *Durnf. and East*, 417. in not. *Folkard v. Hemmet et al.*

without the homage? and that, said his lordship, must go to law; and then it will be for the court of law to consider how far a custom to make such grants *without* the homage be a good custom*.

[36]

The consent of the homage seems to have been necessary for the preservation of their commonage, &c. but it should not be forgotten that the frank-tenants might have a right of commonage in the lord's waste also. The homage of copyholders, therefore, (for frank-tenants are not of the homage in the copyhold court) cannot bind the right of the tenants who hold not by copy. The consent of the homage does not seem, therefore, a sufficient ground on which to rest.

* See 3 *Bos. & Puller*, 346. *Lord Northwick v. Stanway*. [Where it was held, that if there be a custom within a manor for a lord to grant parcels of the waste by copy of court roll, premises granted in that way are well described as copyhold premises, though the date of the grant be modern, and are to be considered as much copyhold tenements as if they had been immemorially holden by copy of court roll.] And note,—Custom for the *Lord* to grant: it does not notice any assent of the homage.

The transcendant power, indeed, of parliament may enable a person to grant by copy (*g*), and such power has been repeatedly conferred (*h*); but then such power, so specifically given, seems to imply that the grants would not be otherwise good.

Lands escheated, &c.

How the demisable property may be destroyed.

[37]

By whatever means the lord accedes to the copyhold interest, whether in consequence of escheat, forfeiture, descent, surrender, or otherwise (*i*): or however the copyholder takes the *manor* (*k*); yet, as lord, he may regrant the premises by copy; unless he change the nature of the estate by creating a common law interest in the lands. If he make a lease for years or any other estate by deed *, the demisable property of the pre-

(*g*) See 2 *Durnf. & East*, 415. in the case of *Revell v. Jodrell*.

(*h*) 35 *Hen. 8. c. 13.* 37 *Hen. 8. c. 2.* and 22 and 23 *Car. 2. c. 3.* relative to *Thornbury* in *Gloucestershire*, &c.

(*i*) 1 *Roll. Abr.* 498. *Copyh. (B).* 4 *Co. 31. a.* *French's case.*

(*k*) See *French's case*, *ubi sup.* &c.

* Or without deed, 4 *Co. 31. a.* *Cro. Car.* 521. 1 *Roll. Abr.* 498. *Copyhold. (B).* pl. 3. Lease for any time *certain* destroys the custom. See 1 *Roll. Abr.* 498. *Copy. (B).* pl. 3. and my *Princ. of Convey.* p. 10.

mises would be for ever destroyed : but if he retain them for any length of time * in his hands, he may grant them by copy again. Or if a copyhold in fee escheat to the lord, and he grant it to another by copy for life, he may grant the reversion also by copy ; or grant

* *Cro. Eliz.* 699. *Harris v. Jay.* 4 *Co.* 31. a. *French's case.* *Co. Copyh.* s. 62. *Tr.* 141. *Quære.* It is said if the lord lease the copyhold for a *year* or for *half a year*, &c. by deed, or even by *parol*, the demisable property is destroyed ; because it would be, during that time, severed from the manor. (See *Cro. Car.* 521.) Yet, is not the possession of the lessee the possession of the lord ; and, consequently, may not the copyhold be still said to be in his demesne ? But it should be remembered that the interest of the lessee is a *common law* interest, and not a *copyhold* interest : yet it is said if the lord lease at will (*Co. Copyh.* s. 62. *Tr.* 141. 3 *Leon.* 108.) it will not destroy the demisable quality, though an estate at will is a *common law* and not a *copyhold* interest. Besides, it does not appear how the leasing the copyhold for a *year* can be a *severance from the manor*. It is not like a grant in fee. When the copyholder leases by licence, it is no severance. It should therefore seem, that the reason is, that while the *term* (whether it be for several years, or for half a year) continues, the premises are *not demisable*, but that when they are only granted *at will* they are *demisable*, as the lord may determine his will at any time.

a new copy on the death of the tenant for life (*l*).

So, if the interruption be wrongful, as if the lord be disseised, and the disseisor die seised, or if the land be recovered against the lord by false verdict, or erroneous judgment ; in these cases, till the land be recovered or the judgment reversed by the lord of the manor, the land will not be demised or demisable ; and yet, after the land be recontinued, it will be grantable again by copy ; for *non valet impedimentum quod de jure non sortitur effectum, et quod contra legem fit pro infecto habetur* : but if the land so forfeited or escheated before any new grant made be extended upon a statute or recognizance acknowledged by the lord, or if the wife of the lord in a writ of dower have this land assigned to her, although these impediments are by acts in law, yet, inasmuch as the interruptions are lawful, the lands can never after be granted by copy (*m*).

But if a copyhold escheat, and the lord

(*l*) 1 Leon. 56. Kemp and Carter.

(*m*) 3 Co. 31. a. 4 French's case.

pro tempore, who has only a particular interest in the manor, make a lease for years or other common law estate which would have absolutely destroyed the demisable property of the lands, had such lease or estate been made by a tenant in fee, yet such lord, having only the particular interest in the manor, shall not, by his own act, prejudice him in remainder or reversion: and therefore, although he himself shall be bound by his own act, and absolutely precluded from granting the premises again by copy, yet, on the determination of his estate in the manor, the premises may be granted by copy again: for the custom shall not be destroyed, as to those in remainder (*n*). So, if the king lease an escheated copyhold by deed, the custom shall not be destroyed; but, on the expiration of the lease, he may again grant it by copy: for the grant of the king shall not

[38]

(*n*) *Cro. Eliz.* 459. *Conesbie v. Ruskey*. 2 *Roll. Abr.* 271. *Prescript* (T.) pl. 1-4. S. C. under the name of *Rusley* and *Conesby*. 2 *ibid.* 196-7. *Prerogative le Roy* (G) pl. 3, 4. *Cremer* and *Burnett*, and *n.* (7) to *Co. Litt.* 58. b. [But see 3 *Barnes. & Ald.* 153. *Badger v. Ford*, and *supr.* *n.* (*e*).]

enure to a double intent as the grant of a subject may do (o).

Who may re-
grant such es-
cheated lands.

[39]

And as to the grant of lands which were once held by copy and escheated to the lord, we may observe that it matters not whether they escheated before the accession of the granting lord to the manor, or within his own time ; for immediately on their escheating they fell into the manor and passed along with it, and, consequently, might have been granted again by copy (in case their demisable property was not destroyed by their being turned into common law estates) by any lord who acceded to the manor, however trifling his interest, provided his interest were lawful (p).

Again, if a copyholder accede to the manor, and his copyhold be, in consequence, extin-

(o) *Cremer and Burnett, ubi sup.* and *Gilb. Ten.* 304.

(p) See *Sir Wm. Jones*, 449. *Lee and Boothby*.
1 *Keb.* 720. *S. C. Cro. Car.* 521. *S. C.* 4 *Co.* 31. *b.*
French's case.

guished, he may grant it again by copy (*q*) equally as the lord originally entitled to the manor might have done in case the copyhold had escheated or been surrendered to his use: for it matters not whether the manor come to the copyholder, or the copyhold come to the lord.

If the lord have only a particular interest in the manor, he may grant by copy, though the estate so granted by him may not only continue longer than his own estate in the manor, but even if the estate so granted may eventually not come into possession during the existence of his own estate: thus, a tenant for life (*r*), in dower (*s*), or guardian (*t*), and seemingly by the better authority as well as from the reason of the thing, a lessee for years (*u*), may so grant in reversion, though the grant may not take effect

(*q*) *Moore*, 185. pl. 330. *Hide and Lyon*. 4 Co. 31. b. S. C. *Hut.* 65. *Blemmerhasset v. Humberston*. Sir *W. Jones*, 41. S. C.

(*r*) *Calth.* 99.

(*s*) *Cro. Eliz.* 661. *Gay and Kay*.

(*t*) 2 *Roll. Abr.* 41. *Gardien*, (2) pl. 3. *Shapland and Ridler*. 2 *P. Wms.* 122.

(*u*) See *Gilb. Ten.* 204.

hand it is not enough to affirm that they are held "by copy of court roll," without shewing also that they are held "at the will of the lord" (*d*); for otherwise they may be only customary freeholds*.

of the roll, or if he lose his copy, yet the roll is still a sufficient title for his copyhold, and even if the roll be also lost; yet it seems that by proof he can make this good. *Calth.* 47, 8. [And see 16 *East*, 208. *Doe d. Bennington v. Hall.*]

(*d*) *Cro. Car.* 229. *Hughes v. Harrys.* *Carth.* 432. *Gale v. Noble.* *Co. Copyh.* s. 32. *Tr.* p. 58. *Blackst. Tracts*, Consid. on Copyholders, and 2 *Com.* 149. ch. 9. And see 7 *East*, 409. *Brown v. Rawlins.*

* [See however, as to this, 7 *East*, 299. *Doe d. Cook v. Danvers*, where it was held, that the *freehold* of an estate, parcel of a manor, and demisable only by the licence of the lord, passing by surrender and admittance, and to which the tenant was admitted by the description of a customary tenement, *habendum* to her and her heirs, *tenendum* of the lord, by the rod, according to the custom of the manor, by the accustomed rent, suit of court, and other services, is in the *lord*, and not in the tenant, though *not holden at the will of the lord*: and that such an estate may well pass under the description of copyhold in a will, or even instructions for a will, without attestation or signature, provided that neither be required by the terms of the surrender to the use of the will. See also, *ibid.* 409. *Brown v. Rawlins.*]

And it is observed by Lord Coke (*e*), that there is no tenant in the law that holds by copy but only this kind of customary tenant ; for no man, says he, holds by copy of a charter, or by copy of a fine ; but this tenant holds by copy of court roll.

Sixthly, they are to be held “ at the will of the lord, according to the custom of the manor.” Under the preceding branch of our definition, we have noticed the necessity of alleging that the copyholder holds “ at the will of the lord.” The copyholder was, originally, strictly and merely a tenant at will. He was solely indebted to the munificence of his lord for his lands ; and his lord might have resumed them at pleasure. While the tenant, however, conducted himself faithfully, and fulfilled his conditions and returns, he was suffered to continue in the possession of the estate. If indeed he failed in these, his interest, of consequence, became forfeited to the lord.

—“ at the will of the lord, according to the custom of the manor.”

Of the estate of the copyholder.

When the tenant died, his children, de- And progress of copyholds.

(*e*) *Co. Lit.* 57. b. *Co. Copyh.* s. 32. *Tr.* p. 57.

[42] pendent upon their industry in rustic employs for support, and bred up under the protection and in the interest of their lord, were often permitted to retain the spot which their father had cultivated; and succeeded on the conditions under which he had held them. This seemed reasonable and just. It was conceived hard to deprive the children of a faithful vassal, of the scanty pittance they might reap from succeeding him. This became, therefore, frequently practised; and in many manors, this ripened into custom. The common law, always friendly to freedom, countenanced every measure which favoured it, and which tended to make the tenant less dependent on his lord. The conditions on which the vassal held his copyhold, became in time fixed in their nature, though perhaps not always so in their duration and extent; and it thence became usual to grant such an interest to the tenant and his heirs, yet subject to the right of resumption by the lord. The tenant, notwithstanding such descendible estate, was still, therefore, said to hold at the lord's will; and his heir was necessitated to be regularly admitted to the tenancy. He acknowledged the gift, and

was grateful for the renewed munificence of the lord. He accepted the seisin and paid his fine. Should the lord, indeed, have required an exorbitant fine, the heir would have been disinherited; but this the law at length prevented, and confined his demands within the limits of justice, and regulated them by the value of the lands to which the heir ought of right to succeed. As the tenant held only at will, at least in the consideration of law, he could not transfer his interest to another; at the most, he could only [43] relinquish his own right to the premises. He therefore returned them to his lord. When a copyholder wished to transfer his estate, he communicated those wishes to the lord, who often complied with his request, and accepted his resignation under confidence to regrant the estate to the person he was desirous should succeed him (*f*). This also becoming more frequent, and the connection every day relaxing between the

(*f*) In early times freeholds were frequently so transferred. Vide *Mad. Fern. Angl.* No. C. *Mad. Bar. Anglica.* b. 3. c. 4. p. 230. *Dalrymp. F.P.* c. 6. s. 1. p. 232. *Fitz. Abr. Præscript.* pl. 29.

lord and his tenant, the returns and duties becoming more fixed and certain, and the advantages of alienation perpetually presenting themselves, the law countenanced the usage, and often enforced its compliance. Still, however, a regular resignation or surrender, by the old tenant, and a regular acceptance or admission of the new were requisite. And this form must to this day be adhered to (*g*).

Thus has the law supported and strengthened the estate of the tenant, though it still regards him as holding at the will of the lord. But the tenant has long ceased to be subject to his caprice. The grant indeed by the lord is solely dependent on his option. The lord cannot be compelled to grant (*h*);

(*g*) *Watk.* No. lxvi. to *Gilb. Ten.* p. 407-9.

(*h*) *Moore*, 788. *Lord Grey's case.* *Watk.* No. lxxxi. to *Gilb. Ten.* 413.

But a custom for a tenant for life to name his successor is good, for this is a *quasi fee*. 1 *Roll. Abr.* 560. *Customes* (E.) pl. 18. and (H) pl. 1. *Rawles and Mason.* 2 *Brownl.* 85. 192. S. C. *Noy's Rep.* 3. S. C. cited. 1 *Roll. Rep.* 48. *Crabb and Bevis*, cited *Noy.* 3. S. C. and see *Noy.* 2. 4 *Leon.* 238. *Ball's*

for this were to deprive him of the ownership of his property. The lord can be no more obliged to grant a portion of his demesnes to another, than to convey the manor itself to a stranger. He may do either if he pleases; but he is not compellable to grant at all.

[44]

If, however, he chooses to grant a portion of his demesnes to a person to be held by copy, his election is made. From the very time of the grant, and in consequence of the very act, the copyholder ceases to be a mere tenant at the will of his lord: he is no longer subject to his caprice. The lord has granted him his estate, and the law has established it. The absolute control of the lord has fled, and the tenant is in by the custom. Hence he is no longer said to hold merely "at the will of the lord," but "at the will of the lord according to the

The copyholder is in by the custom.

case. *Preced. Chanc.* 3. *Devenish v. Baines*, and see 2 *Darnf. & East*, 746. *Mardiner v. Elliott*. See post ch. 7. of Fines. Coke, C. J. thought that a copyholder could not nominate part to one and part to another. See 2 *Brownl.* 199.

[45]

custom of the manor." But though the copyholder's interest is thus established, he is still considered, as to many purposes, as a tenant at will; though that will be circumscribed and controlled by the custom. The freehold of the premises remains in the lord (i); and the possession of the copyholder is regarded as the lord's possession, and shall, consequently, cause a *possessio fratris* in him (k). While, however, the tenant renders his services and does no act which may amount to a forfeiture of his tenancy, he cannot be deprived by the lord of his interest in the lands. The lord cannot rescind his estate; he cannot determine his will: and if the tenant has a transmissible interest, he is compellable to admit the heir or other person entitled by law. Should the lord presume to remove him from his lands, or even to enter on them, the tenant may have his action of tres-

(i) *Litt.* s. 81. And see 3 *Burr.* 1273. *Stephenson v. Hill.*

(k) *Watk. on Desc.* c. 1. s. 1. p. 51.

pass (d); or even indict him (m); according to the measure of his offence*.

(d) See *Co. Lit.* 60. b. & st. 21 *Jac. c.* 15.

(m) See *Gillb. Ten.* 329.

* [Neither can the lord dig in the copyholder's land, for the great prejudice that he would do to the copyholder's estate. *Gillb. Ten.* 327. and see 1 *Roll. Abr.* 106. *Sir William Jones*, 243. *Player v. Roberts*, and 1 *P. Wms.* 408. And in *Bourne v. Tylor*, 10 *East*, 189, it was accordingly held, that the lord of a manor, as such, has no right, without a special custom, to enter upon the copyholds within his manor, under which there are mines and veins of coal, in order to bore for and work the same: and that the copyholder may maintain trespass against him for so doing. Hence it should seem that the lord of a manor may be in the same situation with respect to mines as with respect to trees; that is, the property may be in him, but at the same time he cannot enter and take it without consent; which must be acquired by purchase or otherwise. See 17 *Ves.* 282. And if a person attempts, or even threatens to break up mines having no right so to do, that is a reason for coming into Chancery to have an injunction. *Per* the LORD CHANCELLOR, in *Gibson v. Smith*, *Pasch.* 1741. *Barnard. Chanc. Rep.* 497. And accordingly, in *Grey v. the Duke of Northumberland*, an injunction was granted against a lord preparing to open a mine. 13 *Ves.* 236. But a distinction was recognized between opening a mine and working one already opened:

Immediately on the grant being made, the tenant is in by the custom. Hence the estate of the lord need not be commensurate with that of the tenant; the former is not merely derived from the latter. Hence a tenant at will of the manor may grant a copyhold to a stranger in fee (*n*). The copyholder shall be in by the custom, and paramount the interest of the granting lord. Hence the estate so granted to be held by copy shall not be subject to his charges or incumbrances (*o*).

And his estate shall not be subject to the lord's charges.

and such injunction will not be continued beyond a reasonable time for bringing the matter to trial. 17 *Ibid.* 281. And, with regard to the opening and working of mines by the lord of a manor, it has further been held, that a custom for him and his tenants sinking pits for collieries in the freehold lands to lay and continue the rubbish, materials, &c. on the lands of the customary tenants near the pits, is void, as being unreasonable and arbitrary, and tending to defeat the copyholder of the whole profits of his land, and to destroy his estate. See 2 *Stra.* 1224. and 1 *Wils.* 63. *Wilkes v. Broadbent*. With respect to the lord's power as to trees, see *Gilb. Ten.* 238. and seq. *Watk. Ed.* and the authorities there cited, and *infr.* p. 332.]

(*n*) 4 *Co.* 23. b. 6 *Co.* 60. b.

(*o*) See 8 *Co.* 63. *Swayne's case.*

If a copyhold escheat, and the lord grant a rent-charge or acknowledge a statute, and then regrant the copyhold, the rent or statute will not affect the copyhold; but the tenant shall be in paramount the charge (*p*). If, indeed, the manor had been actually extended on the statute, the lands would be bound (*q*); but in that case they would be no longer grantable by copy.

[46]

The copyholder, therefore, being in by the custom, shall not be prejudiced by the acts of the lord. If the lord, therefore, convey the freehold of the lands so held by copy to a stranger (*r*), or lease them to a stranger for years (*s*), the copyhold shall not be extinguished. If, indeed, the lessee assign over to the copyholder, his copyhold interest would be destroyed; but then this would be in consequence of *his own act* (*t*), and not im-

—nor prejudiced by his acts.

(*p*) See *Gilb. Ten.* 202. and *Watk.* No. lxxxvi. p. 430.

(*q*) *Co. Copyh.* s. 62. *Tr.* 141. See *Saville*, 71. pl. 146.

(*r*) 4 *Co.* 24. b. *Murrel and Smith, &c.*

(*s*) 2 *Co.* 16. b. *Lane's case.* 2 *Leon.* 209. *Beal and Langley.* 4 *Leon.* 230. S. C.

(*t*) *Lane's case, ubi sup.*

mediately in consequence of the act of his lord.

The next thing to be remarked, with respect to "the custom of the manor," is, the estate which such custom prescribes.

What estate
may be
granted.

[47]

When a copyhold escheats, the lord is, as we have already observed, under no obligation to regrant it by copy: he may keep it himself; or absolutely destroy its demisable properties, by turning the premises into frank-fee. Yet if he chooses to grant it again by copy, his control over it is no more during the existence of the grant. On the grant being made, the custom of the manor immediately takes effect, and prescribes its extent with respect to the estate of the tenant. The lord cannot exceed the limits prescribed by the custom; he may grant for a less, but he cannot grant for a greater estate (*u*). If the custom warrants him to grant in fee-simple, he may grant any other estate, since all others are included in a fee (*w*); he may grant to a

(*u*) See *Co. Copyh.* s. 41. *Tr.* p. 90.

(*w*) 4 *Co.* 23. a. *Bullock and Dibley. Co. Lit.* 52. b.

person and the heirs of his body, with remainders over (*x*). If the custom authorizes him to grant for three lives, he may grant for one; or to one for the lives of three (*y*); or he may grant for years (*z*). If he may grant an absolute estate, he may grant a conditional one*. If the custom be to grant in fee, "*and not otherwise*," a less estate may be equally granted, though a less estate was never granted before; for the words, "*and not otherwise*," would be of no avail; such a restrictive clause would not be good (*b*).

(*x*) See *Bullock and Dibley, ubi sup. Cro. Eliz. 373. Stanton and Barnes. Watt. No. lxxix. Gibb. Ten. 495-7. post. ch. 4.*

(*y*) 2 *Ld. Raym. 994. Smartle and Penhallow.* The words *et non aliter* must be meant only of the extent of the custom, and not that the lord is confined to the formality of a grant for three lives only. Custom to grant for one life; grant to two jointly not good. *Per Fenner and Popham, obiter, in Gravener v. Brook et al. Poph. 35. and see Lord Raym. 997. Arg. (sed quare.)*

(*z*) 4 *Co. 23. a. Co. Lit. 52. b.*

* *Cro. Eliz. 323. Downs v. Hopkins. 4 Co. 29. b.*

(*b*) *Stanton and Barnes, ubi sup. 2 Lord Raym. 994. Smartle and Penhallow.*

So the lord may grant in remainder or reversion, though he have only a particular interest in the manor (c).

[48]

The usual services and returns must be reserved.

Seventhly, the copyhold must be granted “*under the usual services and returns.*”

It was said, by *Ley*, C. J. in the case of *Smith v. Reynard* (d), that when copyhold lands come into the hands of the lord by escheat or forfeiture, the lord may grant those lands by copy rendering (or reserving) a greater rent. But Sir Edward Coke lays it down in express terms (e), that the most trivial variation must not be made from the ancient services, else the heir may avoid the grant: nay if the ancient rent were expressly reserved in gold, and, on the new grant, it be reserved in silver, it would be fatal; or if two copyholds escheat, the one usually demised at twenty shillings rent, and the other at ten, and the lord grant them

(c) *Ante*, p. 39. Though it has been said that such a lord cannot grant in parcels. See *ante*, p. 25. n. (n).

(d) 2 *Roll. Rep.* 236.

(e) *Co. Copyh.* s. 41. and see *Cro. Eliz.* 699. 700. *Harris and Jays*, and *post*, ch. 6. p. 281-2.

both, rendering thirty shillings, it would not be good. And this doctrine of Lord Coke's is adopted in its fullest extent by Mr. Justice Blackstone (*f*); and also by the late Chief Baron Gilbert (*g*), who reasons that as there is nothing but custom to warrant the grant by copy, so it ought to be strictly pursued as to the estates, customs, services, and tenure, else it is not the estate that was demised before; and though he conceived that if there were a copyhold in fee, the lord might release part of the services and not do any prejudice to the copyholder's estate,* (for there would then be an estate in being which would appear to have been the old estate,) yet, when the lord grants a new estate by copy, since it is an estate against common right and warranted only by custom, such custom must be strictly pursued in order to bind the heir.

[49]

(*f*) 2 *Comm.* 370. ch. 22.

(*g*) *Ten.* 198.

* See *Hil. 7 Edw. 4.* 25. a. pl. 32. If the lord release his seigniority in part of the tenancy, all the seigniority by his own act is gone. See 6 *Co.* 1. b.

Form of a Grant.

If the grant be out of court let a memorandum be thus made :—

Manor of Fairhurst. } BE IT REMEMBERED that on this,
the day of in the
year of our Lord, &c. I, M. Earl of B. lord
of the manor of *Fairhurst* aforesaid, HAVE
granted unto C. D. of &c. and his heirs ALL
that messuage &c. situate, &c. and within,
and parcel of, the said manor, which were
heretofore in the possession of A. B. and
held by him of the same manor by copy of
court roll, &c. and on his decease escheated
for want of heirs; AND that I have also given
unto the said C. D. *seisin* thereof by the rod;
TO HOLD to him, the said C. D. and his
heirs, by copy of court roll, at the will of the
lord, according, &c. by the same rents, cus-
toms, and services, as the same messuage,
&c. have been heretofore held. AND that
the said C. D. gave for a fine 100*l.* but his
fealty was respited.

If in court, say,—

ALSO AT THIS COURT the lord of the said manor, by his said steward, granted unto *C. D. ALL, &c.* And the said *C. D.* being present in court in his proper person, prayed seisin of the said, &c. **WHEREUPON** the lord by his said steward granted seisin thereof by the rod, &c.

CHAP. III.

OF SURRENDERS.

[50]
Nature of.

A COPYHOLDER being in consideration of law but a tenant at will, he had no interest which he could transfer to another ; he could only relinquish his own right to the premises. When he was, therefore, desirous that another should succeed him in the tenancy, he surrendered or returned the possession to the lord, under confidence that he would regrant the premises to the person he himself should designate*. If the lord

* *Bract. lib. 4. Tr. 1. c. 28. s. 5. fol. 209. a. Trew, weiver cel et dit que l'usage fuit tiel, et que les fraunk t̃z poiẽt vendr̃ lour terres, et quant ilz vendr̃ &c. ils riend ~en court et rend ~al oepe cesty que serra feffee, et les bailes ferra exec. &c. Fitzh. Abr. Prescript. pl. 29. cites P. 13 Ed. 3. Note. These frank-tenants*

accepted such resignation under such confidence the Court of Chancery enforced the trust. This power, thus assumed by the courts of Equity, seems coeval with the introduction of uses with respect to freeholds. Though seemingly new in the time of Edward the Fourth, it was generally acquiesced in, as it opened the way for the alienation of copyhold as well as of freehold estates; and the connection between the lord and tenant every day relaxing, and the returns and duties becoming more certain and fixed, the law countenanced the usage (*h*).

Before the statute of *quia emptores terrarum* this was an usual mode of conveying freehold estates. Many instances remain of their being so transferred, even through the medium of the king (*i*).

[51]

were stated to hold in *villainage*; i. e. their persons were *free*, but their tenure was *base*. See *ante*, p. 7. The word *feoffee* shews that the custom of *enfeoffing* was usual at that time (13 *Ed.* 3.)

(*h*) See *Watk. Gilb. Ten.* 408. No. lxvi. 410. No. lxix. and 2 *Bl. Comm.* 366, ch. 22.

(*i*) *Mad. Bar. Angl.* b. 3. c. 4. p. 230. (*b*). *Mad. Form. Angl.* No. c. *Watk.* No. lxvi. to *Gilb. Ten.* 408. and see *Dalrymp. F. P.* ch. 6. s. 1. and *ante*, ch. 2. p. [43].

Copyholds being still considered in law as estates at will, they can only be thus transferred. A surrender or resignation must be made by the tenant to the lord, and a new grant must be made to the person who wishes to succeed him (*k*).

This mode, indeed, is now considered as a form (*l*); but even as a form, it is, generally speaking, indispensable. A copyhold cannot properly be transferred by any other assurance; no feoffment or grant will have that operation. If I would exchange a copyhold estate with another, I cannot do it by an ordinary deed of exchange at the common law, but we must surrender to each others' use, and the lord will admit us accordingly. If I would devise a copyhold, I must surrender it to the use of my last will and testament (*); and in my will I must declare my intentions, and name a devisee, who will then be entitled to admission (*m*).

(*k*) *Watk. Gilb. Ten.* No. lxvi. and lxix. 4 *Co.* 22. a.

(*l*) See *Watk. Gilb. Ten.* No. lxx.

(*) [But by st. 55 Geo. 3. c. 192. such surrender is now rendered unnecessary.]

(*m*) 2 *Bl. Comm.* 387. ch. 22.

SURRENDERS.

23

The power of alienation in the copyholder is now, however, so established, that the lord is compellable, not only by *subpœna* in equity, but by *mandamus* at law, to admit the person [52] nominated by the former tenant (n).

The manner in which a copyhold is sur- How made.
rendered, is this : the tenant, either in person or by attorney, yields or returns the seisin or possession of the premises to the lord, or his steward, or to certain tenants, according as the custom is, by re-delivering or returning the symbol of seisin by which he was admitted (o), as a relinquishment of the premises as to himself ; and, if it be not intended for the immediate benefit of the lord, at the same time designating the person who is to be instituted into the tenancy. It is thus entered on the roll :

(n) [The lord cannot help receiving the surrender. Per the LORD CHANCELLOR, in *Williams v. Ld. Lonsdale*, 3 *Ves.* 752. and vide *infra*. p. 93. and chap. 6. Of Admission. But by special custom the sole right of preparing such surrender may belong to the steward or his deputy. See 2 *Barnes. & Ald.* 550. *The King v. Rigge.*]

(o) *Post.* ch. 6. Of Admission.

Entry of in
the roll.

[53]

“ At this court came I. S. one of the copyhold or customary tenants of this manor, and surrendered into the hands of the lord by the rod,” (or other customary symbol, as the usage may be,) “ and acceptance of the said steward, according to the custom of the said manor, all that copyhold messuage, &c. now in the occupation of, &c. and of which he the said I. S. at the time of making the surrender, was seised in fee (*p*), at the will of the lord, according to the custom of this manor; [and all other his copyhold or customary tenements whatsoever, holden of the manor aforesaid:] and all his estate,

(*p*) Though a surrender passes only that estate which the copyholder has in himself and may lawfully pass, yet, if the uses to which the surrender is made, are more extensive than such estate, and the lord admits the surrenderee according to the uses declared, the admittance may operate as a new grant. [*Vid. supr. p. 24.*] It is, therefore, advisable to express the estate which the surrenderor has in the premises in order to prevent an imposition or error. For should the expressed estate not be commensurate with the uses declared, the matter would be apparent.

See *Watk. Gilb. Ten.* 255. 257. 451-3. No. cxix. cxx. 4 *Icon.* 88. *Ca.* 186. “ 1 *Freem.* 246.

right, title, interest, use, trust, benefit, claim, and demand (*q*) of, in, to, or out of, the same or any part thereof, *to the use and behoof of, &c.*

A surrender, therefore, may be thus de- Defined.
fined: “the yielding up of an estate by the tenant to the lord, either as a relinquishment or resignation of such estate, or as the mean of conveying or transferring it to another.”

First then, it is “*the yielding up of an estate.*”

(*q*) It is often proper to insert the words “all the estate, right, &c.” as they may operate *as a grant or release of the right*, when the tenant has, in reality, ~~only~~ a right to or an equity in the premises. See *2 Vern.* 16. *Spindlar and Wilford*, and *post.* p. 61. But *q^d* of this, as it is neither under seal nor stamped. And a right or equity of any kind should, *at law*, be released by *deed*. And though a court of equity might deem *signing* sufficient, yet may it not be subject to a stamp duty? See *post.* as to the surrender of a rent, and *q^d* whether *Spindlar v. Wilford* was not on surrenders which were made before the Statute of Frauds? But note, that interests in copyhold property are excepted in the stat. sect. 3. But *trusts* must be granted or assigned by writing. s. 9.

What shall
amount to a
surrender.

This must be apparent from what has been already observed ; but we shall here inquire into what the law considers as amounting to the yielding up, or surrendering of a copyhold : and such yielding up or surrendering of a copyhold may be either by express words or by implication of law.

[54]

Sir Edward Coke affirms that the word *surrender* is *vocabulum artis* ; and therefore, where a surrender is needful, if this one word be wanting, all other words used in ordinary conveyances, says he, are ineffectual and insufficient to convey any copyhold estate ; for if a copyholder come into court, and offer to pass his copyhold by word of grant, of gift, of bargain and sale, or such like, I doubt he will fail of his purpose : for as he is tied to a singular form of assurance, so is he restrained to peculiar words in his assurance (r).

Yet he tells us, in the same section, that a surrender (where, by a subsequent admission, the grant is to receive its perfection and con-

(r) *Copyh.* §. 39.

firmation) is rather a manifesting of the grantor's intention, than the passing away any interest in the possession. And it should seem, from other books, that any words manifesting such intention, will operate as a surrender, provided it be not prejudicial to the rights of third persons (s).

There is, indeed, much obscurity, and seemingly, inconsistency in the books with respect to this subject; though there are several distinctions laid down which seem to have been relied on, that should not here be forgotten. When the lands are to pass for the lord's immediate benefit, "a small matter will suffice to throw them into his hands (t);" but the law will be more strict, and insist more strongly on the compliance with form, where the surrender, if well made, will be the mean of conveyance to a stranger; and, lastly, it will not dispense with a particle of the form, where it is to operate to the destruction of a third person's right.

[65]

(s) *Gillb. Ten.* 252. 311. *Sir Thomas Jones's Rep.* 142. *Zinzon v. Talmash.*

(t) 2 *Show. Rep.* 131. *Zinzon v. Talmash.*

As to the first and second cases, it has been held, that if the copyholder use the words "*bargain and sell*" instead of "surrender" it will be sufficient to *extinguish* his copyhold for the benefit of the lord (*u*); but that those words will not operate as a surrender so as to benefit a stranger; for in that case the heir of the copyholder may avoid it (*w*).

When the interest of third persons is affected, the surrenderee is, with more propriety, restricted to the prescribed terms. Thus on a grant for lives *successive*, with a custom for the first taker to destroy the whole estate by surrendering into the lord's hands; if the first taker join with the lord *in levying a fine* of the lands to the use of others, the fine shall not operate as a surrender so as to satisfy the custom and defeat the limitations over to the other lives (*x*).

(*u*) *Hutton*, 65. *Blemmerhasset v. Humberstone*.
Sir *W. Jones's Rep.* 41. S. C.

(*w*) *Calth.* 57. See *Co. Copyh. ubi sup.*

(*x*) 2 *Show. Rep.* 130. *Zinzon v. Talmash*. Sir *T. Jones*,
142. S. C. 1 *Freem.* 263. S. C.

In instances, however, where the rights of other persons are not prejudiced, it should seem the better opinion, as well by the greater number of cases as the reason of the thing, that any words expressive of the intention of the copyholder to return the copyhold into the lord's hands for the purpose of its being conveyed to a stranger, will be a sufficient surrender in law.

Calthorpe says, that if a copyholder come [56] into court and tell the lord that, for the preferment of his son in marriage, his will is to give his land presently to his son, and desire the lord to be contented therewith, and the same be recorded or found by the homage as a surrender, and so presented, it would be a good surrender, without other words (*y*). So, if in court he desire the lord to admit his son to be tenant in his father's place, he says, this seems a good surrender to the son (*z*).

If a copyholder come into court and say

(*y*) *Readings*, 59.

(*z*) *Calth.* 57, 8.

that he "is weary of his copyhold," and request the lord to take it (*a*); or if he *resigns* his interest, in court, into the lord's hands, to do therewith his will (*b*); it will be a good surrender; but in these cases the surrender operates as an *extinguishment*.

But it is said that if a copyholder *renounces* his copyhold (*c*), or declares that he will be no longer the lord's tenant (*d*), though the words be recorded, it will be no surrender.

[57]

But surely if the word surrender be not *vocabulum artis*, be not absolutely, in any instance, indispensable, there cannot be an instance in which it would be less wanted than in these. Is not the copyhold in these cases solemnly *resigned*, relinquished, and abandoned? and is it not said, with respect to extinguishment, that "a small matter suffices to throw it into the lord's hands"? And Chief Baron Gilbert infers, that, as a copyholder is only a tenant at

(*a*) *Hutt.* 65.

(*b*) *Calth.* 58.

(*c*) 1 *Roll. Abr.* 502. (L.) *pl.* 2. See *Kitch.* 124. *b*.

(*d*) *Calth.* 58. See *Kitch.* 124. *b*.

will, any thing amounting to a determination of that will, on the part of the copyholder, will be sufficient to extinguish his copyhold (e).

Yet words spoken by a copyholder must be expressive of an actual and immediate relinquishment of the premises to amount to a surrender, for if he only says he is *content* to surrender, or the like, he only expresses an intention of doing so at some future time: which will not be a surrender in law (f).

So, if a copyholder *covenant* to surrender (g); though the covenant be presented by the homage (h).

But we may here observe that those words which, if spoken in court would amount to a surrender, will amount to a surrender when spoken out of court before a person

(e) *Gilb. Ten.* 301.

(f) *Calth.* 58. *Gilb. Ten.* 252.

(g) See 2 *Show.* 131. *Zinzon v. Talmash.*

(h) 2 *Durnf. & East*, 484. *The King v. The Lord of the Manor of Hendon.*

who is authorized to take a surrender out of court : but words spoken before indifferent persons, or in common conversation, or in anger, &c. cannot amount to a surrender of copyholds(*i*).

[58]
Surrender by
implication.

That a copyhold may be surrendered by implication, is now indisputably established, however it was doubted in former times.

If a copyholder in fee comes into court and accepts a new copy, to himself for life, remainder to his wife for life, remainder to his son for life, this is tantamount to, or implies a surrender to the use of himself for life, &c. But the reversion continues in him (*k*) : for, had an actual surrender been made, no more would have passed than would have satisfied the uses declared (*l*) ; and no further surrender shall be implied than is requisite to give effect to the new uses or estates.

What may be
surrendered.

Secondly, a surrender “ is the yielding up

(*i*) See *Gilb. Ten.* 273-4. and *Watk.* No. cxv. p. 450.

(*k*) *Gilb. Ten.* p. 254.

(*l*) See *Watk.* No. cxvi. to *Gilb. Ten.* p. 450.

of an estate.” Nothing can properly be the subject of a surrender but a legal interest. A surrender is the relinquishment of the *tenancy*; or at least the returning of that portion of the seisin which rests in the person who is about to surrender.

But it is not necessary that such person have an estate in *possession*; it is enough if it be in *remainder* or *reversion*; for the persons in remainder or reversion are equally in the seisin of the fee (*m*). A remainder or reversion, therefore, is equally the subject of a surrender *.

A reversion
or remainder.

If a copyholder in fee surrender for a less estate †, as to A. for life, he may enter on the determination of A.’s estate; as he con-

[59]

Reversioner
being in of
his old seisin.

(*m*) See *Butt. Addit. Notes to Co. Litt.* 266. b. N. (1).

* [And previously to the passing of st. 55 Geo. 3, c. 192. a devise of either required a surrender to the use of the will. See 12 *Ves.* 426, *Church v. Mundy*; but by the provisions of that act such surrender is now rendered unnecessary as to a contingent or executory interest. See *infra*, p. 210.]

† Copyholder may surrender part of his *interest*. *Cro. Eliz.* 442. *Fitch v. Hockley*; or part of the *lands*. *Vin. Copyh.* 42. (A. a.) pl. 3.

or remainder
man on ad-
mission of the
particular te-
nant,

may surren-
der;

but not the
surrenderee
of a rever-
sion, &c. be-
fore his own
admission.

Heir of rever-
sioner, &c.

tinues in of his old seisin (*n*): if a copyhold be limited to one person, with remainders over to others, the admission of the particular tenant gives seisin or admission also to the remainder men (*o*): the reversioner or remainder man, therefore, being in the seisin, may surrender that reversion or remainder to another, without a personal admittance to themselves (*p*).

But the surrenderee of a reversion or remainder cannot properly surrender before his own admission; for before such admission he is not in the seisin; having never been accepted as a tenant (*q*).

The heir of a reversioner or remainder-

(*n*) 9 Co. 107. a. and see *post. ch. 6. of Admission, and ch. 7. of Fines.*

(*o*) See *post. ch. 6. Of Admission.*

(*p*) *Cro. Eliz. 504. Gyppen v. Bunney. Ibid. 662. Colchin v. Colchin. 3 Leon. 239. Butler & Lightfoot, 4 Ibid. 9. S. C. and 4 Ibid. 111. Hegger v. Felston. Q^r. whether the remainder man must not satisfy the lord for his fine, as the heir must do on surrendering before admission?*

(*q*) See *post. p. 60.*

man may, indeed, surrender before his own admittance, on satisfying the lord for his fine (r); but this is no more than an heir of a person who was actually possessed might have done (s). As the heir, in each of the three instances, has a legal interest in the premises, the actual admittance is only for the security of the lord's fine; if that fine be satisfied it is enough; the admission of the heir, is not essential to establish *the heir's* title so as to enable him to surrender. But this is only a *dispensation* of the admission; and not that strictly the heir is tenant, or possessed of an estate which is the proper object of a surrender, independently of such admission.

may surrender on satisfaction of fine.

[60]

Where a person, therefore, is not in the seisin, he cannot properly surrender. If he has only an equity, or right, or authority, or in short, any claim which lies not in tenure (t), he must pass it by another mode

What cannot be surrendered.

(r) *Cra. Eliz.* 504. *Gyppen v. Bunney*. But q^v. whether the case of *Gyppen v. Bunney* warrants this? *Sed vide post.* 245.

(s) 4 *Co.* 22. b. and *post. ch.* 9.

(t) *A fortiori*, if the person has no claim at all; as an heir in the life of his ancestor; for a surrender shall

of conveyance. The person having the legal possession, is the tenant to the lord; and how frequently soever such right, equity, &c. be transferred, the *tenancy* will remain unaffected.

An equitable interest;

An equitable interest in copyholds, therefore, may be assigned or devised without a surrender (*u*).

An authority or power.

So, if an authority or power be given to a person, he may exercise it; and the vendee or appointee shall be in by the original instrument without a new surrender to his use (*w*).

Surrenderee cannot surrender before admission.

So, if a surrender be made to the use of a

not operate as an estoppel. See 3 *Durnf. and East*, 365. *Goodtitle v. Morse*, and 6 *Ibid.* 63. *Doe d. Ibbott v. Cowling & Ux.* 1 *Anstruther*, 11. *Morse v. Faulkner & al.*

(*u*) 1 *Atk.* 388. *Hawkins v. Leigh & al.* *Ibid.* 389. *Macey & al. v. Shurmer.* 2 *Ibid.* 38. *Tuffnell v. Page.* 3 *Ibid.* 73. *Car v. Ellison.* 1 *Ves.* 121. *Allen v. Poulton*, *Ibid.* 490. *Gibson v. Lord Montfort.* and see 1 *Hen. Blackst.* 461. *Roe v. Lowe.*

(*w*) 2 *Wils.* 400. *Holder d. Sulyard v. Preston.* *Cro. Jac.* 199. *Beal & Shepherd.*

stranger, that stranger cannot before his own admittance surrender to the use of another *. The surrenderor continues tenant to the lord. If indeed the lord accept the surrender of the *cestui que trust*, it may be *an implied admission on the first surrender (x)*.

[81]

If a copyholder surrender to another on condition, who is thereupon admitted, he may *release* the condition by deed (y); for the tenancy is already full.

Release of condition.

So, one joint-tenant may release to his companion (z); or he may *surrender* to him, as the surrender is through the intervention of the lord, and so not like the surrender of a joint-tenant of freehold. But by such surrender the joint-tenancy is severed, and the

Release by joint-tenants.

* [So a surrender to the use of his will, made by a surrenderee before admission, is absolutely void and of no effect; and cannot be rendered valid by his subsequent admittance. 11 *East*, 246. *Doe d. Tofield v. Tofield*. See also 16 *ibid.* 210. and vid. *infra*, p. [86] [100] *et seq.*]

(x) See *Gilb. Ten.* 275, 281. &c. and *Watk.* No. lxxv, p. 163. and cxxx. p. 457. and *post.* p. [101]

(y) *Cro. Jac.* 36. *Hull and Shar-brook*.

(z) *Co. Lit.* 59. a. N. (2).

surrenderee shall not be in on the original grant, but by his companion (a).

Release of
right.

If a person be wrongfully admitted, he who has the right may release it (b); but such right is not the subject of a surrender. If, indeed, the person having right "surrenders" it, such his act, though it will not operate as a surrender, may operate as a release, and so be sufficient to pass it (c).

A person
entering by
wrong cannot
surrender;

There cannot properly be a disseisin of a copyholder; for the freehold is in the lord: if any one, therefore, enter "with strong hand" into a copyhold, he does not usurp

(a) *Kitch.* 86. a. *Co. Copyh.* s. 25, p. 79.

(b) 4 *Co.* 25. b. *Kite and Quenton's case*. A person wrongfully admitted (and having the possession,) is a disseisor of the person having right. See 1 *Burr.* 108. But see 3 *Leon.* 210. C. 274.

(c) 2 *Show. Rep.* 82. *Stone and Exton*, and *ante*, [53] (q). [A court of law will not *presume* a release of right from the heir, during the existence of a legal estate by which he was precluded from setting up his claim, (as a tenancy by the curtesy, or the like,) or within twenty years after its determination: but he may, in equity, be called on to discover whether such release were ever executed by him. See 10 *East*, 583. *Doe d. Milner v. Brightwen.*]

the seisin; nor, consequently, become a *tenant**. He cannot, therefore, surrender (*d*). The person having right continues tenant to the lord: and *he* may enter and surrender the estate†. So, if he die, his heir may enter and surrender (*e*).

but the person having the right may do so.

[62]

So, if the lord seize the copyhold wrongfully and grant it to another, and he be accordingly admitted; the rightful copyholder may surrender on his entry (*f*); or he may release his right, as before observed (*g*): though

So he may enter on a person wrongfully admitted, and surrender.

* The *disseisee* continues tenant (see *post.* v. 2. p. [146]) and must be answerable for the services. The writ *de consuetudinibus et servitiis*, lay against the frank-tenant who was disseised. See *Kilw.* 20. b. pl. 4. And the disseisee must have his action over against the disseisor.

(*d*) 2 *Mod.* 32. *Keen v. Kirby*.

† *Yelverton*, 81. *Nowell's case*. See 21 *Jac.* c. 15. and *Co. Lit.* 257. b. N. 1. and *Clayton*, p. 1. [Entry not tolled by descent. See 7 *East*, 299. *Doe d. Cook & Ux. v. Danvers*.]

(*e*) *Cro. Jac.* 36. *Joyner and Lambert*.

(*f*) For on his entry he would be in of his former seisin. See *Co. Copyh.* s. 56. *Tr.* 129.

(*g*) See before, p. [61] (*b*). But this is in case he does not enter; for his entry would destroy the privity, by taking the possession out of the person wrongfully admitted.

he cannot release to a disseisor, as the disseisor is not tenant to the lord (*h*).

A rent cannot properly be surrendered.

A rent cannot properly be held by copy (*i*), nor, consequently, be properly surrendered (*k*) except as incident to the reversion (*l*): but an act purporting to be a surrender may operate so far as to pass it in equity, as a grant, or evidence of an agreement for its sale (*m*).

Who may surrender.

Thirdly, a surrender “is the yielding up of an estate by the *tenant*.” And here we may inquire, *by whom* such surrender may be made?

Who not.

Every person having such an *estate* as may be the subject of a surrender, must be presumed capable of making such surrender; and therefore, if they are not, it must be from a

(*h*) 1 *Leon.* 102. *Wakeford's case*.

(*i*) See *Co. Copyh.* s. 42. *Tr.* 97. *Calth.* 54. *Gilb. Ten.* 331.

(*k*) 2 *Vern.* 16. *Spindlar v. Wilford & al.*

(*l*) See 1 *Leon.* 315. *Austin and Smith*.

(*m*) *Austin and Smith. Spindlar and Wilford, as before.*

personal incapacity ; as by being under age, covert or the like.

And *first*, as to the surrender of an infant ; [63]
 the act of an infant shall not prejudice him : Surrender by
 if therefore, he make a surrender, he may an infant ;
 enter at full age without suit ; though the
 surrenderee be admitted (*n*).

But an infant may be ordered by the court by order of
 of Chancery to surrender a copyhold which chancery.
 he has as a trustee or mortgagee (*o*). So the
 committee of a lunatic may surrender the copy-
 holds of such lunatic, under the direction of
 the court, by the equity of the statute, 4 Geo. 2,
 c. 10.

Secondly, as to *femes covert*.

Femes covert,

Husband and wife may, together, surrender Husband
 the wife's lands ; she being on such surrender, and wife.

(*n*) *Moore*, 597. *Gooles v. Grane*. *Popham*, 39.
 1 *Leon*. 95. *Knight and Footman*.

(*o*) See 7 *Durnf. and East*, 103. *Doe d. Harman*
 & *Ux. v. Morgan* : and see also 2 *Chanc. Rep.* 392.
Naylor v. Strobe.

Examination
of wife.

examined apart by the steward (*p*), though such steward be only by parol; and that without any special custom to warrant it (*q*). So the steward may depute another to take such surrender and to examine the feme covert (*r*). So her examination may be taken on a surrender out of court by two tenants, if there be a special custom, but not otherwise (*s*).

Wife alone.

[64]

As the husband becomes, on marriage, entitled to the profits of the wife's copyholds, during her life, and often, by custom, during his own, it would be unreasonable that the wife should be suffered to deprive him of them by force of a particular custom without his consent: it has therefore been determined, that a custom for a feme covert to

(*p*) *Gilb. Ten.* 277. and see 1 *Hen. Blackst.* 334. *Compton v. Collinson*. And it should seem, that by special custom such surrender would be good, though the feme covert be an infant. See 1 *Hen. Blackst.* 345.

(*q*) *Cro. Jac.* 526. *Smithson v. Cage*.

(*r*) 1 *Leon.* 289. *Burgess and Foster*. *Cro. Eliz.* 48. *Burdett's case*.

(*s*) *Cro. Eliz.* 717. *Erish and Rives*. [And see 4 *Taunt.* 294. *Driver d. Berry v. Thompson*.]

surrender without such consent cannot be supported (f). Not without assent of husband.

But where a copyhold is settled on a wife for her own separate use, it does not fall within the reasons of the last case; and therefore, she may surrender it without her husband (u). Separate estate.

And where the wife is *not* entitled to her separate use, yet a surrender of her copyhold, by her alone, *with* the consent of her husband, would be good (w).

And if the husband be present at such What shall be an assent of the husband.

(f) 2 *Wils.* 1. *Stevens and Wise v. Tyrrell.*

(u) See 2 *Bro. Chan. Cas.* 377. *Compton v. Collinson*, and 1 *Hen. Blackst.* 341. 351. S. C. [So if a copyhold be surrendered to such uses as a feme covert shall by will or codicil appoint, a paper purporting to be a will, though made by her, living her husband, is a good execution. 4 *Taunt.* 294. *Driver d. Berry v. Thompson.*]

(w) See 3 *Leon.* 81. *Skipwith's case.* 4 *Ibid.* 148. S. C. *Godb.* 14. 143. S. C. 2 *Brownl.* 218. *Moore*, 123. *Ca.* 268. See *Bro. Devise.* 34. *Co. Copyh.* 8. 35. *Tr.* 79. 1 *Ves.* 229. *Taylor v. Phillips.* *Ambl.* 628. *George v. —.* 2 *Bro. Ch. Ca.* 377. *Compton v. Collinson*, and 1 *Hen. Blackst.* S. C.

surrender it will be sufficient proof of his assent (*x*). So, if the husband and wife agree to live separate, and the husband thereupon covenants that the wife shall therefore enjoy to her own use her real estates, &c. after such covenant her surrender shall be taken to be with his assent; and by custom such a surrender is good, as appears in *Moore*, 123. [*ca.* 268.] (*y*).

[65]
Marriage, a
revocation of
a surrender to
a will by a
feme sole.

If a feme sole surrender to the use of her will, and afterwards marry; the marriage will be a revocation, or at least a suspension, of the surrender (*z*).

Surrender by
husband no
discontinu-
ance of wife's
estate.

If a husband surrender the copyhold of his wife, it will not be a discontinuance; a surrender only passing what he has a right to convey: it only binds during his own life: on his decease his widow or her heir may enter (*a*).

(*x*) 1 *Ves.* 229. *Taylor v. Phillips*.

(*y*) 2 *Bro Ch. Ca.* 377. and *387. *p. Buller, Commissioner*, and see 1 *Hen. Blackst. S. C.*

(*z*) *Ambler*, 627. *George v. ———*.

(*a*) 4 *Leon.* 88. *Ca.* 186. 4 *Co.* 23. *a. Gilb. Ten.* 189, &c.

And it may be here observed that an husband may surrender his own estate to the use of his wife (*b*); or the wife, where the custom authorizes her to surrender, to that of her husband (*c*): for the conveyance is through the intervention of the lord. But an husband cannot without such intervention convey to his wife, or the wife to the husband, they being but one person in law; and therefore, the lord cannot grant a copyhold to his own wife (*d*).

Husband may surrender to the use of his wife, & *e contra*.

But the lord cannot grant to his own wife.

So, one joint-tenant may surrender to the use of his companion (*e*).

A joint-tenant may surrender to his companion.

But when any one is authorized to surrender his copyhold, it is not always necessary that he should do it in person: he may appoint, in many cases, an attorney for the purpose.

Surrender by attorney.

Where the copyholder is not under any personal incapacity, as *non compos*, covert,

(*b*) 4 Co. 29. *b. Co. Copyh. s. 35. Gilb. Ten. 220.*

(*c*) See last page.

(*d*) 2 Wils. 254. *Firebrass d. Symes v. Pennant.*

(*e*) *Ante*, p. [61]

[66]

or an infant, and possesses a power which may be delegated to another, a surrender which is warranted by the general law of copyholds may be by attorney, as well as in *propria persona*.

Who cannot
make attor-
nies, with re-
spect to the
person.

In the first place, then, the person must not be under personal disability, as before remarked; for a person *non compos*, under coverture, or an infant, cannot make an attorney by the common law (*f*), nor can they be enabled by custom.

Femes covert.

In some cases, indeed, an attorney may be appointed by the husband for himself and his wife; but that cannot be done in the present instance. The wife must, on her surrender, be separately examined by the steward, to prevent the coercion of the husband; this, therefore, would be frustrated by his appointment of an attorney: for a person cannot be examined by deputy.

(*f*) The *stat. 9 Geo. 1.* only enables *femes covert* and infants to make attorneys for the purpose of admission. It has nothing to do with surrenders.

But a feme covert, or infant, may be an attorney for another; for they would act only as instruments and ministerially (*g*).

But a feme covert, &c. may be an attorney.

Secondly, The person who would make an attorney must have such a power to assign as may be so executed; for *delegatus non potest delegare*.

Who cannot make attorney, with respect to the estate.

And, therefore, where executors or other persons are empowered to sell the copyhold of their testator, they cannot surrender by attorney; for, in fact, they are no more than attornies themselves (*h*).

Again, a surrender which may be made by attorney must be such as, if made by the copyholder himself, would be warranted by the general law of copyholds.

[67]

A person cannot surrender by attorney, where he cannot surrender in person without a special custom. And, therefore, though

Thus, a copyholder may surrender in court (*i*), or into the hands of the lord (*k*)

(*g*) See *Co. Litt.* 52. *a*.

(*h*) *Co. Copyh.* s. 34. 9 *Co.* 75. *b*.

(*i*) 9 *Co.* 75. *b*. *Combes's case*.

(*k*) *Co. Litt.* 59. *a*. 1 *Salk.* 184. *Dudfield v. Andrews*.

he may surrender by attorney in court, or to the lord or steward out of it.

or the steward (*l*) out of court (*m*); without a special custom to do so. He, therefore, may surrender in court (*n*), or to the lord (*o*). or steward (*p*) out of it, by attorney. For

(*l*) 1 *Salk.* 184. *Dudfield v. Andrews.* 1 *Lord Raym.* 76. *Tukely v. Hawkins.*

(*m*) In 2 *Ves.* 680. in the case of *Mitchell v. Neale*, it is said, that “ a surrender by attorney cannot be out of court.” But this, if understood generally, is contrary to unquestionable authority.

(*n*) 9 *Co.* 75. *b.*

(*o*) *Gilb. Ten.* 251. 2.

(*p*) It often happens, that a case the most obvious and likely to occur has either not received an absolute decision, or that decision has not been regularly reported; hence a direct reference is sometimes impracticable. The present point, however, that a copyholder may surrender by attorney, into the hands of the steward, out of court, without a special custom, may be proved syllogistically, thus,—In cases where a copyholder may surrender by the general custom of the realm, he may surrender by attorney. *Combes's case*, 9 *Co.* 75. *b.* A copyholder may surrender, by the general custom, to the steward out of court. *Dudfield v. Andrews*, 1 *Salk.* 184. *Tukely v. Hawkins.* 1 *Lord Raym.* 76. Therefore a copyholder may surrender by attorney, into the hands of the steward out of court, by the general custom of the realm.

where he may surrender by the general custom of the realm, which is the common law, it follows that he may do it by attorney, as a thing incident by the common law (*q*). [68]

But where it is necessary to allege a special custom to enable a copyholder to surrender in person, there he cannot surrender by attorney; as to surrender into the hands of two tenants (*r*), or into the hands of the bailiff or reeve of the manor (*s*): for in these cases a special custom would be necessary to warrant the surrender of the copyholder himself, and, therefore, a surrender by attorney would not be good without a further custom for doing so.

He cannot surrender to two tenants, or the bailiff, &c. without a further custom to warrant it.

Having thus seen who may appoint, and who may be appointed an attorney to surrender copyholds, we will now inquire how such attorney may be appointed, and, when he is appointed, how he is to act.

(*q*) 9 Co. 75. *b*.

(*r*) Co. Litt. 59. *a*. 9 Co. 75. *b*. *Combes's case*. Co. Copyh. s. 34. *Gilb. Ten.* 252.

(*s*) Co. Litt. 59. *a*.

How an attorney is to be appointed.

And, in the first place, it is said, that he must be appointed by deed (*t*): for when a stranger comes into court and declares himself authorized to surrender, and so to convey away the property of another person, it is certainly necessary that such authority should be satisfactorily proved by the solemn instrument of the absent party.

The power may be in this form:

Form of the power.

[60]

“ KNOW ALL MEN by these presents, that I, Timothy Walgrave, of Clayton, in the county of Nottingham, Esquire, a customary or copyhold tenant of the manor of Fairhurst, in the county of ———, have made, ordained, constituted, and appointed, and by these presents, do make, &c. Henry Pemberton, of Fairhurst aforesaid, gentleman, and Edmond Akehurst, of the same place, yeoman, (the bailiff or beadle of the manor of Fairhurst aforesaid,) my true and lawful attorney and attornies, jointly or severally, for me the said Timothy Walgrave,

(*t*) *Gilb. Ten.* 252. and *Watk.* No. cxiii. p. 450. and see *Co. Litt.* 52. a.

and in my name and stead, to surrender into the hands of the lord or lords of the said manor of Fairhurst, according to the custom of the same manor, all that capital messuage, &c. and also all and singular other my copyhold or customary messuages, lands, tenements, and hereditaments whatsoever, lying or being within, and belonging to, or held of, the same manor, with their and every of their appurtenances; and all my estate and interest therein; *To the use of* Walter Bridgman, of, &c. his heirs and assigns for ever, according to the custom of the same manor: and for me the said Timothy Walgrave, and in my name, to do and execute all and every act and acts, thing and things, as shall be needful and requisite for making such surrender as aforesaid, and for procuring him, the said Walter Bridgman, his heirs and assigns, to be admitted to the said copyhold premises accordingly; as fully, to all intents and purposes, as if I the said Timothy Walgrave, were personally present and did the same myself; hereby ratifying and confirming whatsoever my said attorney or attornies shall lawfully do, or cause to be done, in or about the premises. In witness whereof, I the said

Timothy Walgrave have hereunto set my hand and seal, this day of
in the year of our lord one thousand, &c.”

How the attorney is to act.

When thus appointed, the attorney is to appear in person ; for an attorney cannot make an attorney. He then should exhibit his powers that the court or lord, &c. may be satisfied as to his authority. In making the surrender, he must follow the usual customs as to form, as if he was surrendering for himself (*k*). He must pursue the particular powers with which his principal has invested him ; for he has no power of his own. If he be authorized to surrender black acre, he cannot surrender white acre ; though they both belong to his principal and both be held of the manor. If he be commissioned to surrender to the use of *A*. he cannot surrender to the use of *B*. If to the use of *A*. for life, he will not be warranted in surrendering to the use of *A*. in fee (*l*).

(*k*) 9 Co. 76. b. 1 Roll. Abr. 501. Copyh. H. pl. (1).

(*l*) But if *A*. be admitted, it will be good for his life ; for where an attorney exceeds his authority, the excess only shall be void. And see Co. Copyh. s. 41. Tr. 93.

He ought to act in the name of his principal; for though he may act in *his own* name, it is more proper and regular to do it in the name of the person appointing him (*m*). But he may act within his authority, although his principal be present (*n*).

When the attorney surrenders, let him [71] say,

“ I, Edmund Akehurst, by virtue of the authority to me given by the power of attorney now read, and made by Timothy Walgrave, Esquire, to me, do, for and in the name of the said Timothy Walgrave, surrender and yield up into the hands of the lord of this manor of Fairhurst, all, &c. (*following the description in the power of attorney,*) to the use and behoof of Walter Bridgman, of, &c. his heirs and assigns for ever, by the delivery of this rod.”

Surrender by
the attorney.

Or thus :

“ Timothy Walgrave, of, &c. doth by me

In the name
of his principal.

(*m*) See 1 *Salk.* 95-6. *Parker v. Kett.* 9 *Co.* 76-7.

(*n*) 2 *Ves.* 679. *Mitchell v. Neale.*

his attorney, lawfully appointed by the instrument now read, surrender and yield up into the hands of the lord of this manor of Fairhurst, all, &c. To the use of Walter Bridgman, of, &c. his heirs and assigns for ever, by the delivery of this rod."

Out of court
into the hands
of the lord.

If the surrender be to the lord out of court,
it may be thus taken :

Manor of } BE IT REMEMBERED, that on the
Fairhurst. } day of in the year of
our lord one thousand, &c. Timothy Walgrave, of Clayton, in the county of Nottingham, Esquire, one of the copyhold or customary tenants of the manor of Fairhurst aforesaid, by Henry Pemberton his attorney, duly appointed by a certain deed poll under the hand and seal of the said Timothy Walgrave, bearing date, &c. did surrender into the proper hands of the lord of the said manor, by the rod, according to the custom of the manor aforesaid, and by the personal acceptance of the said lord, all, &c. *To the use of* Walter Bridgman, of, &c. his heirs and assigns for ever, at the will of

the lord, according to the custom of the said manor.

Timothy Walgrave,

by

Taken the day and year } *Henry Pemberton,*
first above written by me } his attorney.

A. B. lord of the said manor.

If the surrender be to the steward, say —of the stew-
“ by the acceptance of Robert Atkins, ard.
Esquire, chief steward of the said manor,
&c.”

If the surrender be made in court, enter Entry on the
it thus on the roll :— rolls.

“ ALSO AT THIS COURT came Timothy Walgrave, of Clayton, in the county of Nottingham, Esquire, by Edmund Akehurst, his attorney, (duly constituted by a certain deed poll, under the hand and seal of the said Timothy Walgrave, bearing date, &c. which was produced and read in court,) and surrendered into the hands of the lord by the rod, and acceptance of the said steward, all that capital messuage, &c. and all his estate

and interest therein, to the use and behoof of Walter Bridgman, of, &c. his heirs and assigns for ever."

A person is not obliged to surrender by attorney,

But here we may observe that a person is not obliged to surrender by attorney; and, therefore, on a covenant to surrender on request, the refusing to execute a power to make a surrender is no breach (z).

[73]
nor the purchaser to accept a surrender so made.

So, a purchaser is not obliged to accept a surrender by attorney, where the necessity is not apparent (a).

The surrender is a relinquishment of the tenancy.

Fourthly, "A surrender is the yielding up of an estate by the tenant *to the lord*."

We have already noticed that the surrender is only the resignation, or returning, or relinquishment of the copyhold to the lord, at whose will it was originally held; we will now, therefore, inquire into the powers and capacity of the lord to accept such surrender.

(z) *Cro. Car.* 299. *Symms v. Lady Smith*.

(a) 2 *Ves.* 679. *Mitchell v. Neale*.

And in the first place, we must observe that Where and to whom it may be made: a surrender may be made either in or out of court, to the lord in person, to the steward, or his deputy; or by special custom, to the bailiff, beadle, or reeve, or to certain tenants of the manor.

Little need be observed on a surrender In open court. in open court: it is a matter of common right. The copyholder has power to surrender in court as incident to his tenure. No special custom is necessary to be alleged for his doing so (*b*). Such surrender, in the presence of his fellow tenants, is a matter of publicity; it, of consequence, requires no presentment to effectuate it, but is immediately enrolled: and it is simply entered thus:

“ AT THIS COURT came *I. S.* one of the Entry of such surrender on the roll. copyhold or customary tenants of this manor, and surrendered into the hands of the lord, by the rod, and acceptance of his said

(*b*) *Co. Lit.* 59. a.

[74] steward, according to the custom of the manor, all, &c." (c).

Out of court.

We will therefore direct our more immediate attention to a surrender out of court; and proceed to inquire into the capacity of the person to whom a surrender may be made.

And, first, as to the person of the lord.

Who may be such a lord as to take a surrender.

When the surrender is only to operate as a mean of conveyance to a third person, whoever is lord by right or by wrong (d), at the time, is capable of taking such surrender; the lord, in such case, being merely an instrument, the law regards not his title. Whether he be tenant in fee-simple, or only

(c) See *ante*, p. [52.]

(d) But lord, either by right or by wrong, he must be; and, therefore, if the freehold of a particular tenement held by copy be granted to a stranger, such grantee cannot take a surrender; for he is not *dominus pro tempore*. Having no manor, he can, consequently, be no lord. See 4 Co. 25. a. *Murrell v. Smith*. And see *Cro. Elix.* 252. S. C. and *ante*, c. 2. of Grants.

tenant for years, at will, or by sufferance ; whether he have an absolute or defeasible title, or not any title at all ; as if he be an abator, intruder, or disseisor ; whether he have any interest or not in the manor, as if he be a guardian only, or have only an authority ; whether he be an infant, or of full age, &c. (e), it matters not ; for in all these instances he would only be the medium of transfer and act ministerially. The [75] surrenderee when admitted will not be in by the lord, but by him who surrendered to his use (f).

But if the surrender be to the lord's own use, or to be disposed of as he shall please, a surrender to a tenant by wrong, as the disseisor of a manor, shall not, it is said, operate as an extinguishment (g). Surrender to a disseisor to his own use.

(e) See 4 Co. 23. b. 24. a. Co. Lit. 58. b. Co. Copyh. 2. 34. *Viner. Copyh.* (G.) (1. b. 3.) *Comyns's Dig. Copyh.* (C. 3.)

(f) 4 Co. 28. b. and post. p. [106].

(g) Sir T. Jones, 153. *Pit v. Moor.* 2 *Show. Rep.* 156. S. C.

Yet the doctrine, that a surrender to a disseisor shall not operate as an extinguishment, seems questionable. A tenant by wrong, indeed, ought not to be suffered to prejudice him who has right; but it does not appear that if the surrender in this case was to be an extinguishment, it would be attended with injury to any: as to the copyholder, it was his own folly to surrender; and if he suffers in consequence of his own act, he has nobody but himself to blame: and as to the rightful lord, he would be benefited and not injured by the extinguishment of the copyhold; for it would then go along with the manor, and be recovered as part of it on the manor being recovered (*h*). The *grant* of such copyhold by the disseisor, after the surrender, would, most certainly, not be good against the lord by right; for *the voluntary grants of a disseisor would not be valid*; and that was the principal point in the case of *Moore and Pit*. As to the extinguishment, we find a great difference of opinion in that case; and we are told in

[76]

(*h*) See *French's case*, 4 Co. 31. *a.* and *b.*

Freeman (i), that the court inclined to think that it *was* an extinguishment.

A copyholder may surrender into the hands of the lord as well out of court (*k*) as in, and even out of the manor (*l*), without alleging a special custom for so doing.

The lord may take a surrender out of court, or even out of the manor.

Secondly, As to the steward.

Steward.

As the steward, in taking surrenders, acts only ministerially, the law is not very curious in examining the imperfections of his person, nor the lawfulness of his authority; for be he an infant, or *non compos mentis*, an idiot, or lunatic, an outlaw or an excommunicate, yet what things soever he performs as incident to his place can never be avoided for any such disability, because he performs them as a judge, or at least as custom's instrument. And for his authority, though it prove but counterfeit, if it come to exact trial, yet, if

(i) 1 *Freem.* 245.

(k) *Co. Litt.* 59. a.

(l) 1 *Salk.* 184. *Dudfield v. Andrews.*

in appearance or outward show it seems current, that is sufficient (*m*).

As he acts, therefore, merely as an instrument in these cases, no one can suffer from his want of a legal authority, since he only does that which he who has authority is compellable to do ; and a tenant, when about to surrender, is not to investigate the legitimacy of his powers. If he acts ostensibly as steward it is enough.

[77]
A steward
may take a
surrender out
of the manor,
&c.

A steward, as incident to his office, may take a surrender out of court (*n*), or even out of the manor (*o*) : and may, as a consequence, take the examination of a feme covert (*p*) ; though the surrender be to his own use (*q*) : and this without any special custom to warrant him, and though he be retained only by parol.

(*m*) *Co. Copyh.* s. 41. *Tr.* 104.

(*n*) 1 *Salk.* 184. *Dudfield v. Andrews*, *Co. Lit.* 59. a. n. (6).

(*o*) 1 *Lord Raym.* 76. *Tukely v. Hawkins.*

(*p*) *Cro. Jac.* 526. *Smithson v. Cage.*

(*q*) *Cro. Eliz.* 717. *Erish v. Rives.*

So, the copyholder may surrender to him by attorney without alleging a custom (*r*). So he may take a surrender by attorney.

So, a surrender to a deputy steward is good (*s*). So, a deputy may appoint another person to take a surrender (*t*), though it be to be taken out of the kingdom (*u*): and it should seem that the person so deputed may do any act which his principal might have done (*w*), and, by consequence, take the examination of a feme covert (*x*). Deputy steward.

Thirdly, As to the bailiff, beadle, or reeve. Surrender to the bailiff, &c.

A copyholder may surrender out of court to the bailiff, beadle, or reeve of the manor,

(*r*) See *ante*, p. [67].

(*s*) 1 Comyns's Rep. 84. *Parker v. Keck*. 1 Lord Raym. 658. S. C. 1 Salk. 95. S. C. See *Moore*, 112. Ca. 252.

(*t*) See *Parker and Keck*, as before.

(*u*) 4 Leon. 111. *Heggor and Felston*.

(*w*) See 1 Lord Raym. 659.

(*x*) 1 Leon. 289. *Burgess and Foster*. Cro. Eliz. 48. *Burdet's case*, and see Cro. Jac. 526. *Smithson and Cage*.

[78]

by virtue of a special custom ; but not without : and as a special custom is thus necessary to warrant such surrender, the copyholder cannot, without the like special custom, surrender to them by attorney (*y*).

To tenants
out of court.

And, *lastly*, a copyholder may surrender out of court, by special custom, to certain tenants* of the manor ; as into the hands of two tenants (*x*) ; or of one tenant (*a*) ; or to one tenant in the presence of other persons (*b*).

And the heir of a copyholder is a sufficient tenant for the purpose of taking such surrender before his admittance (*c*).

(*y*) *Co. Litt.* 59. *a*.

* Custom to surrender, &c. in the presence of " sufficient witnesses," though not tenants. See Appendix, No. II. *Customs of Yestminster, prima Co. Dorset.*

(*x*) *Co. Litt.* 59. *a*. *Co. Copyh.* s. 34. *Tr.* 79. 9 *Co.* 76. *a*. and *b*. *Chapman's case* cited.

(*a*) *Kitch.* 102. *b*. 1 *Roll. Rep.* 125.

(*b*) *Kitch.* 102. *b*.

(*c*) 1 *Keb.* 25. *Munifuce and Baker, p. Twisden.* The heir before admission is tenant by copy of court-roll. See 4 *Co.* 22. *b*.

But a copyholder, after attainder for felony, cannot take such surrender; though he be pardoned; for, on attainder, he ceased to be a tenant (*d*).

As a special custom is requisite to warrant a surrender to tenants out of court, so a copyholder cannot surrender to them, when so warranted, by attorney, without a further custom to enable him to do so (*e*).

So, such tenants who are authorized to take a surrender cannot take the examination of a feme covert without a special custom empowering them so to do (*f*).

If a copyholder covenant to surrender his copyhold, and afterwards surrender it to two tenants out of court, according to the custom; it will be a good performance (*g*).

[79]

(*d*) Sir *T. Jones*, 190. *Benison and Strode*.

(*e*) *Ante*, p. [68].

(*f*) *Cro. Eliz.* 717. *Erish and Rices*.

(*g*) 3 *Salk.* 100. *Page v. Smith.* 1 *Levinz.* 293.
Beany v. Turner. 2 *Keb.* 660. *Turner v. Benson.*

But if a tenant refuse to take a surrender out of court, where the custom is that he may take such surrender, yet no action lies against him (*h*).

Presentment.

When a surrender is made out of court into the hands of any who cannot thereupon make an admittance, or if no admittance be immediately made by a person enabled to admit, such surrender should be regularly presented.

When requisite.

From the general terms in which the necessity of a presentment of a surrender made out of court is asserted in many of our books, it seems to have been too often inferred, that such presentment is equally requisite into whose hands soever the surrender is made.

No presentment required when the surrender is made to the lord, and admission be immediately made.

It is said in *Calthorpe*, that if the lord, having copyhold lands surrendered into his hands, will, in the presence of his tenants

(*h*) 1 *Roll. Rep.* 126. in the case of *Ford and Hoskins*.

out of court, grant the same to another ; and the steward enter the same into the court book, and make thereof a copy to the grantee ; and the lord die before the next court ; it will be no good copy to hold the land (*i*).

But it must be evident, from the reason of the thing, as well as from the weightier testimony of other writers, that the presentment is only for the information of the lord, to apprise him that such surrender has been made (*k*).

[80]

To what purpose can it be to make known to the lord that such surrender was made, when the lord knows it already. Why declare to him that it was taken, when he must be conscious that he had taken it himself ? Besides, who is to present a surrender taken by the lord ? The lord may take a surrender without the presence of a tenant. Is the lord to present it himself ? But to whom is he to present it ? Whom is

(*i*) *Calth.* 46.

(*k*) *Gilb. Ten.* 278.

he to inform of the event? He cannot present it to himself; and he is not obliged to say any thing about the matter to his tenants. When the lord, therefore, takes a surrender out of court, he may admit without any presentment (*l*).

So as to the
steward.

[81]

The same reasoning holds equally good as to the steward, in cases where the surrender is only the mean of conveyance. He may accept such surrender and immediately admit the *cestuy que use* (*m*). It is clear that many of the books, when speaking of the necessity of a presentment in case of a surrender being made *to the lord* out of court, mean only a surrender made out of court to the lord *by the hands of tenants, or of those of the bailiff or reeve* (*n*).

(*l*) 1 *Roll. Abr. Copyh.* (M) *pl.* 4. p. 502. *Froswell v. Welch.* and see the S. C. at large. 1 *Roll. Rep.* 514. and 3 *Bulstr.* 214. *Godb.* 268. and see also *Watk. Gilb.* 278-9. and No. cxi. p. 447. 9.

(*m*) See *Froswell* and *Welch*, as before, and *Watk.* No. cxi. and cxii. to *Gilb. Ten.*

(*n*) See *Co. Litt.* 62. a. *Co. Copyh.* s. 40.

But if the surrender be taken out of court by the lord or the steward, personally, and no immediate admission be made, the memorandum of the taking of such surrender, signed by the tenant who surrenders, and the lord or the steward taking it (o), should be certified and produced, on admittance being requested at a future time, from the lord if the steward had taken it, or from the steward if taken by the lord.

But if the surrender be made *out of court*, and the admission *in*, it should be so certified.

If admittance be immediately made by the lord or steward taking such surrender, yet such admittance should be regularly notified at the next court-day for the information of the tenants. This too was more immediately necessary in ancient days, as, in case the tenants should have known any objections to the person so admitted, of which the lord might have been ignorant, they might have informed him of them; from which he might have been induced to resume the estate, as having conferred it on a person who was unworthy of the grant. Add to this, that it must be regularly inserted on the court-rolls

And if the admittance be out of court also by the person taking the surrender, yet it should be certified at the next court day.

(o) *Ante*, p. [71].

of the manor, by a copy of which he is to hold (*p*).

But if the surrender be made to any other person than the lord or steward, a presentment will be necessary.

[82]

If the surrender be made into the hands of tenants, or into those of the reeve or bailiff, or, in short, of any other person than the lord or steward, the surrender must be presented in court, in order to inform the lord or the steward that such surrender was taken (*q*). And the presentment is thus made: the person who took the surrender comes into court and produces the memorandum, if any; if there be none, he certifies to the court that the surrender was duly made into his hands, and then the homage present it: and the presentment is thus entered:

Entry of presentment on the rolls.

“AND the homage aforesaid also find and present, that *A. B.* one of the copyhold or customary tenants of this manor, who held to him and his heirs, at the will of the lord, according to the custom of the manor aforesaid, *All* that customary or copyhold mes-

(*p*) *Watk. Gilb. Ten.* 449. cxi.

(*q*) *Co. Litt.* 59. a. &c.

suage, &c. Did, out of court and since the last court, surrender into the hands of the lord, by the rod, and acceptance of *C. D.* the bailiff of this manor, (or *E. F.* one of the customary tenants of this manor; *as the case may be*) according to the custom of this manor, *All* that his said customary or copyhold messuage, &c. *To the use of, &c.*"

Or thus :

"ALSO AT THIS COURT came *A. B.* and *C. D.* two of the copyhold or customary tenants of this manor, in their proper persons, and certified in open court, and thereupon the homage present, that, out of court, and since the last court, *E. F.* who held to him and his heirs at the will of the lord, according to the custom of this manor, *All, &c. Did* surrender into the hands of the lord, by the rod, and acceptance of the said *A. B.* and *C. D.* according to the custom of this manor, *All* that his said copyhold or customary messuage, &c. *To the use of, &c.*

[83]

Such surrender, so taken out of court, should be regularly certified by those who took it. But this, though frequently affirmed

By whom to be certified.

in the books to be indispensable, is now acknowledged not to be of necessity. If the tenants or bailiff who took such surrender die, yet it may be presented on good proof (*r*). And if they are living and do not certify the taking, yet, if it be satisfactorily proved to the court that such surrender was made, it is sufficient (*s*). Were it to depend wholly on the personal testimony of the individuals who took it, the time allowed by the custom for presentment might elapse before they chose to certify (*t*). Besides, the only end of such testimony is to inform the lord or steward that the surrender was duly taken; and if this be accomplished it is enough. If the lord or steward be satisfied that such surrender was absolutely made, they may notice it without a presentment; and their

(*r*) *Gilb. Ten.* 220. *Cro. Jac.* 403. *Frosl v. Welch.* *Co. Copyh.* s. 40.

(*s*) *Gilb. Ten.* 280. *Lex Cust.* 240. ch. 16. And see *Cro. Jac.* 403. *Frosl v. Welch.* But it is said in 3 *Bulst.* 218. that a special custom may confine such notification to the individuals who took the surrender.

(*t*) In case of refusal to present we are told by *Lord Coke*, that on petition or bill exhibited in the lord's court, the party grieved shall there find remedy. *Copyh.* s. 40. p. 89.

admittance of the surrenderee will be good (*u*).
 The end of the presentment is answered; [84]
 and therefore it would be nugatory to present.

But here we may remark the utility of making a memorandum of the taking such surrender out of court, and of its being regularly signed by the surrenderor and the person or persons into whose hands it is made (*w*); that, in case of death, or refusal, or negligence of the persons taking it, the surrender may be the more easily proved.

The presentment of a surrender should, by the general custom of manors, be at the next When to be made.

(*u*) *Gilb.* 278-9. 3 *Bulst.* 217. 219. *Rosewell v. Welsh.* But this is while such surrender continues in force: for, if the surrender become void for want of a timely presentment, or from not being acted on within due time, a subsequent admission will not give it effect. The lord cannot notice a surrender which has ceased to exist. The surrender, in such case, would be utterly at an end, and consequently there could be none on which to found such admission.

(*w*) See *ante*, p. [71], &c.

court; though, by special custom, it may be at a subsequent one (*x*).

And the presentment of a surrender to the use of a will may, by special custom, be made at the next court after the death of the surrenderor, though it be not the next after the surrender made: and it should seem also that it would be good without such special custom (*y*).

[85] If the surrender be not certified within the time prescribed by the custom, the homage, it should seem, would be justified in refusing to present it (*z*). For such custom, being in itself so salutary and reasonable (*a*), ought to be strictly observed: and it does not appear that it can be in the power of the homage to rescind or dispense with it. When the prescribed time is elapsed, the surrender would,

(*x*) *Co. Copyh.* s. 40. *Tr.* 88. *Co. Lit.* 62. a. See 2 *Ves.* 302. 602. 680. A year and a day. *Carter*, 71.

(*y*) See *Com. Dig. Copyh.* (F. 9. & 10.)

(*z*) See 2 *Vern.* 564. *Taylor v. Wheeler*.

(*a*) See *Gilb. Ten.* 280.

it should seem, become absolutely void at law (b).

Equity will, however, under certain circumstances, aid against the want of a timely presentment (c). Want of presentment aided in equity.

Again, such presentment of a surrender out of court may be made though the surrenderor, &c. die. Presentment to be made, though the surrenderor, &c. die.

(b) *Co. Litt.* 62. a. See 2 *Salk.* 449. *Taylor v. Wheeler.* 2 *Vern.* 564. S. C. 2 *Vern.* 609. *Jennings v. Moore & al.* If the custom limit a certain time, as twelve months, it is said that the presentment would not be good if made afterwards, though no court was held during the twelve months: see *Carter*, 75. *Smith v. Paynton*; for the surrenderor should have procured a court. See *Cro. Jac.* 403. But the surrenderor shall in such case be compelled to surrender again. See 2 *Vern.* 564. *Taylor v. Wheeler*, and post. p. [88].

(c) Cases of *Taylor v. Wheeler*, in *Vern.* and *Salk.* *Jennings v. Moore & al.* &c. and 2 *Ves.* 633. *Hinton v. Hinton.* Bro. Cas. Parl. *Blenkarne v. Jennens & al.* (V. 2. p. 278. 8vo. edit.) A. surrendered to uses of will, and devised to his son Andrew in tail,—remainder to Cornelius (a son by second wife) in tail. Surrender void for want of presentment. Andrew died, s. p. leaving a sister of the whole blood his heir. Surrender supplied in favour of Cornelius. No admission of Andrew. *Lloyd v. Burton*, *ibid.* p. 281. and 6 *Vin.* 56.

renderor, or the surrenderee, or both of them, happen to die before such presentment be made (*d*).

The surrender does not derive its obligatory power from the presentment.

[86]

Much is to be found in the books of the obligatory power of the presentment, with respect to surrenders out of court. The surrenderor is not, it is repeatedly affirmed, concluded till the surrender be presented. Before actual presentment say they, he may surrender to another person; and if the second surrender be presented and admittance ensue, it shall totally annul the former (*e*).

That the estate continues in the surrenderor till presentment is clear: and it is equally clear, that it continues in him till admission (*f*). And it is clear also that the ensuing admission shall relate to the surrender and defeat the mesne acts of the surrenderor (*g*).

(*d*) 4 Co. 29. b. 5 Burr. 2764. *Vaughan d. Atkins v. Atkins.* 1 Salk. 185. *Benson v. Scott.*

(*e*) See the case of *Burgoine and Spurling, Cro. Car.* 283. *Sir W. Jones*, 306. &c. *Gilb. Ten.* 281.

(*f*) *Post.* p. [100].

(*g*) *Benson and Scott, Carth.* 275. &c. *Vaughan d. Atkins v. Atkins.* 5 Burr. 2764. And *post.* p. [103].

But the truth seems to be that so soon as the copyholder surrenders, though out of court, for a valuable consideration (*h*), so soon is the surrenderor concluded at law (*i*), as well as in equity (*k*); and his hands for ever bound up from disposing of the land in any other way, and his mouth for ever stopped from revoking or countermanding his own deliberate act (*l*).

[87]

If, indeed the surrender be merely *voluntary* the surrenderor may revoke it, not only at any time before presentment, but,

Revocation of
a surrender.

(*h*) See *Kitch.* 82. a. *Co. Copyh.* s. 39. *Tr.* 87-8.

(*i*) See *Kitch.* and *Co. ubi sup.* 2 *Blackst. Comm.* c. 22. p. 368-9. and 4 *Burr.* 1961. *Lord Mansfield*, in the case of *Vaughan d. Atkins v. Atkins*, said the "surrender is a complete execution of the contract, as between the vendor and vendee." 5 *Burr.* 2785. And in that of *Roe d. Noden v. Griffiths*, he repeatedly declared that "the land was bound by the surrender." 4 *Burr.* 1961. So also in that of *Vaughan d. Atkins v. Atkins.* 5 *Burr.* 2787. See also *Salk.* 185. *Benson and Scott*; and 1 *Durnf. & East*, 601. *Holdfast d. Woollams v. Clapham.*

(*k*) See *Taylor and Wheeler.* 2 *Salk.* 449. and 2 *Vern.* 564. *Jennings v. Moore et al.* 2 *Vern.* 609.

(*l*) *Co. Copyh.* s. 39. *Tr.* p. 88. 2 *Bl. Comm.* 369.

according to *Kitchen*, (“ a book,” said C. J. *Willes*, “ of good authority ; and the rather because founded on old determinations, not advancing fancies of their own(*m*),”) at any time before admission : “ and this,” said he, “ is most commonly done, and that with reason ; and such appears to me to be the law (*n*).”

It is not, therefore, in either case, the presentment that concludes the surrenderor. In the case of a surrender for a valuable consideration, he cannot revoke it, or possibly delude or defraud the surrenderee of the effects of his surrender or the fruits of his grant (*o*).

And where the surrender is *merely voluntary*, he may revoke *after presentment* as well as before (*p*).

(*m*) 2 *Ves.* 609.

(*n*) *Kitch.* 82. a. Revocation of a voluntary settlement. See *Cowp.* 705. *Doe v. Routledge.*

(*o*) *Co. Copyh.* s. 39. *Tr.* p. 88.

(*p*) *Kitch.* 82. a. as before.

If indeed the custom require that a surrender should be presented within a limited time, and declare that it shall be void if not presented within such time, if it be not presented within such time, it must, of consequence, be annulled : but this does not prove that it was revocable *before* it was rendered void. If it become void by reason of a want of a timely presentment, the surrenderor will [in cases of valuable or meritorious consideration,] be compellable to surrender anew (*q*).

Surrender becoming void on non-presentment within time.

[88]

the vendor must make a new surrender.

Great care, however, should be taken that the presentment be duly made within the time which the custom has prescribed, and that the presentment, when made, exactly "ensue" or correspond with the surrender.

The presentment must accord with the surrender.

And, on this latter point, the observations and reasoning of the late Lord Chief Baron *Gilbert*, are so just and forcible that I shall give his own words.

(*q*) See 2 *Vern.* 564. *Taylor v. Wheeler*, and *ante*, p. [85].

“ My Lord *Coke* says (*r*), that presentments of surrenders ought, in all material points, to ensue and agree with the surrenders themselves, else the surrender, presentment, and admittance thereupon will be void, which seems reasonable; for if the presentment in matter differs from the surrender, the lord has no sufficient notice of the surrender, and then the admittance of it in reason must be bad, and not help out the presentment; for if the lord knew the true surrender, perhaps he would never consent to such a surrender; and the true surrender ought to be known, that the lord may know his tenant, and from whom to take his services. The admittance cannot help out, for that was grounded upon the presentment; but if the lord had notice of the true surrender, though the presentment did differ, yet it seems reasonable the admittance should enure according to the surrender, because he had notice of the true surrender, and when a man is admitted, he is in by the surrender.

[89]

(*r*) *Co. Copy.* s. 40. *Tr.* p. 88. 4 *Co.* 25. a. 2 *Bl. Comm.* 369. Ch. 22.

Where it is said that, if the presentment differ in points material from the surrender, that there the admittance, presentment, and surrender, are all void ; it seems this must be understood, if the time for presenting the surrender be past ; for if there should be a presentment and admittance made contrary to the surrender, sure this will not make the surrender void before the utmost time allowed by law for the surrender's being presented ; for it is no reason to say that because the presentment is void, that therefore the surrender is void ; for the surrender depends not on the presentment, though it may be void because not presented, but not because ill presented. So that if after such ill presentment and admittance, there should be a good presentment and admittance, it seems the surrender and all other acts will stand good (s).

If the presentment be truly made, and accord with the surrender, and yet be wrongly entered upon the rolls, the rolls shall be amended.

An erroneous entry on the roll may be amended.

[90] As if a surrender be made upon condition, and so presented, and the steward, in entering it, omit the condition, enrolling it as an absolute one, yet, upon sufficient proof made in court, the surrender shall not be avoided, but the roll, being no estoppel nor record, shall be amended, and this shall be no conclusion to the party, to plead or give in evidence the truth of the matter (*t*). And though the admission was absolute, yet the surrenderee shall be subject to the condition; for when admitted, he shall be in by the surrenderor, and the lord cannot vary his estate (*u*).

(*t*) *Co. Copyh.* s. 40. p. 89. *Gilb. Ten.* 192. 254. *Dyer*, 251. b. *Winter and Jeringham*. In the case of *Winter and Jeringham*, the enrolment embraced more copyhold property of the tenant than the surrender, and the question was whether more should pass? And we are told that "it was in debate for the space of 24 years in several courts; and, by the opinion of *Dyer*, no more than was particularly expressed in the surrender should pass. And accordingly a decree was made by Lord Wentworth, Lord and Chancellor of his manor of Hackney; whereof he afterwards repented: yet many others agreed with the above opinion as law." See also *Cas. T. Finch*, 254. *Brend v. Brend*.

(*u*) See 4 *Co.* 28. b. and 3 *Burr.* 1543. and 4 *ibid.* 1961.

Fifthly ; “ A surrender is the yielding up of an estate by the tenant to the lord, either as a *relinquishment or resignation of such estate*, or as the mean of conveying or transferring it to another.”

And here we shall consider such surrender as a *relinquishment or resignation of the copyholder's estate*.

Surrender considered as a relinquishment of the estate.

Long after the *Norman* conquest there were many villeins or bondmen in so abject a slavery as to hold the portions allotted them of the demesnes of the manor absolutely at the will of the lord ; being neither permitted to hold them against the lord's inclination, nor to quit them without his permission. So far from acquiring property themselves, they themselves were the property of their lord. Instead of the lands belonging to them, they were regarded as annexed to the lands. On a grant of the manor they passed as appendages ; and were not considered as having a will of their own.

Under the ancient law there were villeins who could not relinquish.

[91]

There were others who, though they held at the will of the lord, might have quitted or renounced the tenancy when they thought proper to do so:

There were others who might have done so.

A third class
were irremov-
able while
they perform-
ed their ser-
vices.

Again, a third class existed who could neither be amoved or expelled from their lands, while they performed the services imposed, nor compelled to hold them against their inclinations (*w*).

So a copyhol-
der cannot be
expulsed but
by reason of
his own act:

[92]

Without tracing, however, the changes which the villein tenure experienced, or the melioration of the state of the peasantry, we may remark that it has been long established that the copyholder cannot be deprived of his lands, (though he is still said to hold at the will of the lord) but by his own act or misconduct (*x*). If he neglect or refuse the returns which he is bound by his tenancy to render ; if he do any act incompatible with the nature of his tenure, or injurious to the estate which he holds, a forfeiture will be justly incurred. But while he duly performs his services and acts consistently with his relations to the lord, he has a right to retain his lands till he choose to relinquish the tenancy.

(*w*) See 1 *Bl. Law Tr.* 119, &c. and the authorities there referred to, and *Watk.* No. cxli. to *Gilb. Ten.* p. 462.

(*x*) See *ante*, ch. 2. Of Grants, p. [44], &c.

If he is desirous of returning the lands to the lord, he may surrender up the possession to him by the accustomed symbol, and in the usual form, as he would have surrendered it to the use of any other person; declaring expressly his intention that it shall be to the use or benefit of the lord, or, in the language of earlier days, “that the lord may do therewith his will (*y*).”

but he may
relinquish his
estate.

Express re-
linquishment.

Though no use be expressed, yet if it be merely surrendered into the lord's hands, and there be no peculiar circumstance in such surrender to rebut the presumption, it will be a sufficient relinquishment; and shall be to the benefit of the lord: as the surrender in itself is no more than the returning the possession of, and right to, the tenements to the lord of whom they are held. And if there be nothing to induce a different construction, if there be no apparent end which such different construction

No use ex-
pressed.

(*y*) Of a surrender to the *disseisor* of a manor, see *ante*, p. [75].

can answer, the surrender must have its natural effect (*z*).

[93]
Relinquish-
ment.

There are many modes by which the tenancy may be relinquished, but they will more properly fall under our consideration when we come to treat of the extinguishment of copyhold property (*a*).

But the lands
may be again
granted by
copy.

When a copyhold is thus returned to the lord it still retains its demisable qualities ; but, till granted again by copy, it shall follow the manor into whose hands soever it pass (*b*).

Surrender
considered as
the mean of
conveyance.

In the next place, we shall consider such surrender as the *mean of conveying or transferring a copyhold to another*.

We have already seen the *necessity* of a

(*z*) See 1 *Lord Raym.* 627. *Fisher and Wigg, p. Holt. C. J.* 1 *P. W.* 17, *S. C. Watk. No. cxvii. to Gilb. Ten.* 457.

(*a*) *Post.* ch. 9.

(*b*) *Post.* ch. 9.

surrender as such mean of conveyance and the principles on which it depends (c).

We have seen too, that, though the copyholder held originally merely at the will of the lord, the law has so established his interest that he cannot be dispossessed of his tenements while he renders his services and observes the customs of the manor (d). As the law has thus established his interest, it has also enabled him to transfer it to another on pursuing the accustomed forms. The copyholder has now in most cases a right to nominate a person to succeed him in his tenancy; whom (if such person has no legal incapacity to take) the lord is compellable to accept as his tenant (e).

Right of the copyholder to transfer his interest.

The surrender, therefore, in these cases is only a form; it is merely the medium of conveyance: for even where it is strictly observed, it is now purely subservient to the

[94]
Surrender a form.

(c) *Ante*, p. [43] [50] &c.

(d) *Ante*, ch. 2. p. [44] OF GRANTS.

(e) *Ante*, p. [51] [52] and *post.* ch. 6. OF ADMISSION.

conveniency of the tenant, as a mode of transferring his interest.

On surrender
no estate
passes to the
lord.

Surrenderor
remains te-
nant till ad-
mission of
surrenderee;

and may sur-
render to an-
other without
a formal re-
vocation.

On such surrender being made, no estate passes, in consequence, to the lord (*f*), but it remains, till the nominee be admitted, in the surrenderor. *He* continues tenant; and must answer the services and returns (*g*). Till such admission of the surrenderee, the surrenderor may maintain an action of trespass (*h*); and, if he die, the premises will descend to his heir (*i*).

If he surrender to the use of any one without consideration, he may again surrender to another without a formal revocation of the first surrender (*k*). So, if he surrender to the use of his will, and afterwards, without taking any notice of such surrender, he surrender to another in fee, the second surrender will be good (*l*).

(*f*) *Cro. Car.* 283. *Burgoin and Spurling.*

(*g*) *Co. Copyh.* s. 39.

(*h*) *Cro. Eliz.* 349. *Berry and Greene.*

(*i*) *Cro. Jac.* 403. *Frosel v. Welsh.*

(*k*) See *ante*, *Cro. Car.* 283. *Burgoin and Spurling.*

(*l*) *Cro. Eliz.* 442. *Fitch and Hockley*; and see

So, as a surrender is merely to effectuate the copyholder's alienation, no more shall pass by it than it was his intention to pass : if the copyholder, therefore, surrender to the use of *A.* for life, or in tail; or to the use of his last will; and he die without making a will; or, if making a will, he limit only a portion of the estate; the residue, or part undisposed of, in the first and last cases, and the whole in the second, will be the old estate and descend to his customary heirs (*m*).

No more passes than to answer the intent of the surrenderor.

[95]

The residue continues in him.

So if he surrender to particular uses with the ultimate limitation expressly to his own right heirs, they shall take such limitation as the old estate, and, consequently, by descent (*n*).

If he limit to his own heirs they shall be in of the old estate.

Watkins
Descent
262 -

² *Just. Blackst. Rep.* 1046. *Thrustout d. Gower v. Cunningham.* [But in case no admittance take place, under the second surrender, a devise of the copyhold will be supported by the former surrender to the use of the will. *Ibid.* and see 16 *Ves.* 527. also *infra*, p. [123].]

(*m*) 9 *Co.* 107. *a.* 1 *Brownl.* 181. *Cro. Eliz.* 148. *Bullen and Grant. Ibid.* 442. *Fitch v. Hockley.* 4 *Co.* 29. *b.* [See also 3 *Barnew. & Ald.* 462. *Vawser & others v. Jeffery.*]

(*n*) 4 *Burr.* 1952. 1960. *Roe d. Noden v. Griffiths.*

Distinction in
Allen & Pal-
mer contro-
verted.

1 Scrim
143 -

A difference, indeed, has been taken, as to this latter point, when the surrenderor takes a particular estate himself, and when not. As, if a surrender be made to the use of the surrenderor for life, with remainder to a stranger in tail, and the ultimate limitation be to the heirs of the surrenderor, his heirs shall take by *descent*: yet if the surrenderor take *no particular estate himself*, and the ultimate limitation then be to his own heirs, such heirs, it is said, shall be in *by purchase* (o).

But although this distinction is recognized in the case of *Roe v. Quartley*, (by *Ashurst, J.*

[And note, that in a case of uncertainty, as to whether by the term "Right heirs of A." in the ultimate limitation of an estate, be meant the right heirs of the surrenderor, or those of another person mentioned in the surrender of a similar name, it would be sufficient to support an ejectment for the right heir of the surrenderor, to shew the existence of such uncertainty on the face of the surrender; for to defeat his title it must be distinctly made appear, that such ultimate remainder passed out of the surrenderor. See 9 *East*, 407, and *infra*, p. [107] note (k).]

(o) See the case of *Allen and Palmer*, 1 *Leon.* 101. and *Kitch.* 86. a. 88 a. and b. *Lex Cust.* 125. ch. 15.

when delivering the opinion of the court (*p*) ;) yet such distinction has been questioned by C. B. Gilbert (*q*) ; and, after him by Mr. Fearne (*r*). [96]

Had the ultimate limitation been expressly made to the surrenderor and his heirs, whether he himself had, or had not, taken a particular estate, his heirs would necessarily have been in *by descent*. But whether such surrenderor would have taken such ultimate estate (without taking a particular one) as a *remainder*, or as *his reversion*, seems to have been disputed. According to the distinction above noticed, and especially the case cited in *Kitchen*, the surrenderor would have taken it as a *remainder* : but according to later decisions, and particularly the case of *Roe d. Noden v. Griffiths* (*s*), he would have been in of his *old estate*.

(*p*) 1 *Durnf. and East*, 634.

(*q*) *Ten.* 272-3.

(*r*) *Conting. Rem.* 48. 3d *Ed.* 86. 4th *Ed.* [67. *Ed. Butl.*]

(*s*) 4 *Burr.* 1952. and see *Thrustout d. Gower v. Cunningham. Fearne*, 90. (4th *Ed.*) [68. *Ed. Butl.*] and 2 *Just. Blackst. Rep.* 1046.

[97]

And it has, indeed, been, I believe, uniformly held that, if a copyholder in fee surrender his estate to the use of his will, and devise to a stranger for life, or in tail, and so leave a portion of the fee unlimited, (*without* giving it expressly to his heirs) it shall be considered as his reversion, or undisposed of residue, and go to his heirs by descent (*t*). So, where a copyholder, seised in fee, surrendered to the use of his will, and afterwards *surrendered* to particular uses, with the ultimate limitation to his own right heirs; it was adjudged that he was in of his *old estate*, and that he might have devised his reversion without any fresh surrender or admission (*u*).

Now the idea that when the ultimate limitation was *expressly* made to the heirs of the surrenderor, the heirs should take by *purchase*, and when it was not expressly made to them, but resulted or arose by im-

(*t*) 1 *Leon.* 174. *Bulleyn and Grant.* *Cro. Eliz.* 148. S. C. 4 Co. 29. *b. Bunting and Lepingwell.*

(*u*) *Thrustout d. Gower v. Cunningham.* 1 *Fearne*, 90. [68 *Ed. Butl.*] and 2 *Just. Blackst. Rep.* 1046. [And see 3 *Barnes. & Ald.* 462. *Vawser & others v. Jeffery.*]

plication, they should take by *descent*, originated in this; that the estate being yielded to the lord, the uses limited were *new* uses; and as the *whole estate* was thus limited, nothing remained in the surrenderor. But when the whole was *not* so limited, the residue, as *undisposed* of, resulted to him again. And a distinction similar to this was once held as to freeholds (*w*). But as such distinction, with respect to freeholds, has been now long exploded; it having been repeatedly declared that it matters not whether the ultimate limitation to the heirs of the grantor be expressly made or result by implication of law (*x*); and as the doctrine once entertained that by a surrender of a copyhold the *old* estate of the surrenderor was destroyed, and the uses limited to his heirs on such surrender were absolutely new, and such as if limited to his heirs, should be taken by purchase, is also exploded by

[98]

(*w*) *Dyer*, 134. *a. pl.* 7. &c. and *Hob.* 31.

(*x*) 3 *Levinz* 406. *Goulbolt v. Freestone*, *Salk.* 591. *Abbott v. Burton*, and both recognized in 2 *P. Wms.* 138. *Harris v. Bishop of Lincoln*, where the case in *Hob.* 31, was denied to be law.

modern decisions (*y*); it should seem that the distinction above noticed is also antiquated as to copyholds.

Surrender passes only what the tenant has a right to transfer.

Again, a surrender when considered as the mean of conveyance can, by the terms, pass that only which the copyholder has to transfer (*z*). If a copyholder for life, therefore, surrender to another for the life of that other, it will only give the second a right to an estate for the life of the first; even if a custom be alleged to the contrary (*a*). If the lord, indeed, chooses to admit the second person to an estate for his life, it may operate as a grant; and the lord will be bound by his own act. But in that case, the second person will not be in by the surrenderor, but by the lord (*b*).

(*y*) See 1 *Fearne*, 88, [67. *Ed. Butl.*] &c. and the cases by him cited, and 1 *Strange*, 487, *Smith v. Trigg*.

(*z*) See *Co. Copyh.* s. 34. *Tr.* 76.

(*a*) *Moore*, 8. *ca.* 27. and see *Gilb. Ten.* 257. and *Watk.* No. cxix. and cxx. p. 451-3.

(*b*) See *Watk.* No. cxix. and cxx. to *Gilb. Ten.* p. 452. and see 4 *Leon.* 88. *ca.* 184. [Also *supr.* p. [24] [52-3] in *not.*]

The copyholder can only transfer his own interest and nominate another to take what he himself has to relinquish. He cannot convey what he has not: *that* cannot be transferred which is not in existence. So if any further interest *be* in existence and vested in another person, the surrender of the immediate copyholder cannot convey such further interest. He may transfer his own property; but not that of others. Hence a surrender shall pass no more than what the person making it may lawfully pass (c). It shall not work a wrong. A surrender by the husband will be no discontinuance of the wife's land (d).

[99]

A surrender by a tenant in tail may bar his issue; but this is on a different princi-

(c) *Co. Copyh.* s. 34. *Tr.* p. 76. [It may further be remarked, that a surrender, in whatever terms it may be conceived, can only point out to whom, and for what estate the land is meant to be transferred by the person making such surrender. It can work no alteration in the terms of the tenure itself; neither can it vary the custom of the manor any more than an admittance; but both the tenant and the lord are equally bound by the custom. See 7 *East*, 429.]

(d) 4 *Co.* 23. a.

ple ; which will be noticed in the chapter on entails (e).

Having thus considered the surrender as it respects the person who makes it, we will now inquire into its effects as it regards the surrenderee.

Surrenderee
does not take
strictly as a
cestui que use.

And in the first place, it has been remarked that though a surrender is generally said to be made *to the use* of another, yet the person in whose favour it is made shall take merely as a *nominee* or *appointee* : he is not properly *cestui que use*. The surrender is only a direction to the lord how to grant the lands. The estate remains in the surrenderor, and not in the lord. A surrender, therefore, is not to receive a construction similar to that of an use or trust (f). A

(e) *Post.* ch. 4.

(f) *P. Holt*, C. J. in the case of *Fisher and Wigg.*
1 *P. Wms.* 17. 1 *Lord Raym.* 627. and by *Hardwicke*,
C. in the case of *Rigden v. Vallier.* 2 *Ves.* 257. and see
1 *Brownl.* 127. *Allen and Nash.*

But the *surrenderor* has been considered as a *trustee* for the surrenderee. See 1 *Durnf. & East*, 601-2. With respect, indeed, to the *lord* he is merely a *nominee*. The lord is not *seised* to his use.

very extraordinary reason is, indeed, given for this in *Vesey*; which is, that copyholds are not within the statute of uses. That copyholds are not within the statute of uses is certain: but it does not follow from thence that the person taking should not have taken as *cestui que use* at common law. Had he taken as *cestui que use* before that statute, he would have taken as such after it: for the statute would not have altered the nature of the thing; nor made it less an use, though it did not embrace copyhold property within its provisions.

[100]

The surrenderee, therefore, taking merely as nominee, as the person expressly designated by the surrenderor for the admission of the lord, was not, till such admission actually made (*g*), considered as having any thing in the premises: neither a *jus in re*, nor yet *ad rem*. But this, indeed, was the language applied to the *cestui que use* of freeholds before the statute.

Before admission he was said to have neither a *jus in re*, nor yet *ad rem*.

Such nominee could not, before admis-

He could not enter without consent.

(*g*) For it is the admission, and not the *presentment*, which makes him tenant. See before, p. [86].

[101] sion, even have entered upon the lands surrendered to his use, without being regarded as a trespasser (*h*): unless, indeed, it was by the permission of the surrenderor; and then he was considered as his tenant at will (*i*). The surrenderor continuing tenant to the lord, must, of consequence, retain the possession. He is answerable to the lord for the services due, and therefore must be entitled to the profits and fruits of the premises. The surrenderor, consequently, and not the surrenderee, must be the person to maintain an action of trespass (*k*).

Nor maintain
trespass.

Nor surrender
to another.

Having, therefore, no estate in the premises, he has none to convey or to forfeit. He cannot surrender to the use of another; for he has nothing on which a surrender can operate (*l*). Should, the lord, indeed, accept such surrender, (or at least what we must here call such,) and admit the second nominee, it should seem to be the better opi-

(*h*) *Cro. Eliz.* 349. *Berry & Greene. Co. Copyh.* s. 39. *Tr.* p. 87.

(*i*) See *Watk.* No. cxxxviii. to *Gilb. Ten.* p. 460.

(*k*) See *ante*, p. [94] and *Cro. Eliz.* 349. *Berry & Greene.*

(*l*) 1 *Brownl.* 143. *Wilson v. Woddell.* [and *vid. supr.* p. [60].]

nion that such admission would be good ; though its validity has been controverted (*m*). Yet this would be in support, and not in contradiction, of our position : since it only *implies a prior admission*, and not that an admission was *unnecessary*.

As he has nothing to transfer, so he can Nor forfeit.
have nothing to forfeit*. If he commit felony and be attainted (*n*), or if he commit waste (*o*), no forfeiture will ensue.

(*m*) See *Gilb. Ten.* 275. 281. &c. and *Watk.* No. cxxx. p. 457. and *Cro. Eliz.* 504. *Gypsen & Bunney*, also *ante*, p. [60].

* By special custom he shall forfeit on not coming to be admitted. See 1 *Roll. Abr.* 568. *Customs* (G.) pl. 5. *Baspool v. Long*, and *Cro. Eliz.* 879. S. C. and *post.* [237] *Sed qd.* is it not the surrenderor who forfeits in such case? See *Carth.* 44-5. Per *Holt* in *King v. Dilliston*, and 1 *Salk.* 386. S. C. and that only *quousque*, 1 *Salk.* 386.

(*n*) See 2 *Wils.* 13 & 16. *Roe d. Jeffereys v. Hicks*.

(*o*) See *Co. Copyh.* 2. 59. *Tr.* p. 137. *Sed quære de hoc*. And *quære* also, whether, if a surrenderee in possession by consent, commit waste, and afterwards be admitted, the admittance shall relate back to the surrender, and so make it a forfeiture? Or whether the surrenderor shall be answerable for it, it being done by a person who occupies by his permission and

[102] The surrenderee is now, however, regarded as having such an interest in the premises as may be the object of a devise or assignment.

But he may
now devise
his interests.

Thus if a surrender be made, though out of court, to the use of *A.* and then *A.* devise all his lands to *B.* and die before any admittance be made; yet the copyholds so surrendered will pass (*p*). For the testator had a title in equity to recover them; and, according to *Ashurst, J.* in the case of *Woollams & Clapham*, the vendor stood seised for him till a legal conveyance could be

he continuing tenant? See *Moore, 49. pl. 149.* and *Gilb. Ten. 235. (d).* If waste be committed, the lord must have a remedy: the surrender must not be turned to his prejudice. It should seem, however, that admission after waste would be a dispensation.

(*p*) 3 *Chanc. Rep. 4. Davies & Beversham. Nels. Ch. Rep. 76. S. C. 2 Freem. 157. S. C.* and see 1 *Durnf. & East, 601. S. C. cited.* See also *Roe d. Noden v. Griffiths, 4 Burr. 1952. 1 Just. Blackst. 605.* and 1 *Ves. Jun. 254.* [But see 1 *Madd. 627. Wainwright v. Elwell*, where it is said by the Vice-Chancellor that the doctrine as to the power of a surrenderee to devise before admittance is here laid down too generally. See also *infra. p. [104] n. (b).*]

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17 Decr. 1865 —

made : the surrenderor being considered as a trustee for the surrenderee (q).

But an heir cannot devise without admittance : for he has more than an equity. His interest may be surrendered on satisfaction of the fine (though by the way such satisfaction of fine implies an admittance and acknowledges its necessity) ; unless, therefore, the heir surrender to the use of his will, his interest will not pass by his devise (r).

So if a surrender be made, the surrenderee [103]
may assign his interest, and the lord shall be Or assign it.
compelled to admit (s).

(q) See 1 *Durnf. & East*, 601-2. *Holdfast d. Wool-lams v. Clapham*.

(r) See 1 *Strange*, 487. *Smith v. Trigg*, and 1 *Atk.* 388. *Hawkins v. Leigh et al.* [But by stat. 55 Geo. 3. c. 192. such devise would now be valid without surrender.] Ancestor dies,—heir makes his will,—and afterwards is admitted, and surrenders to the use of will : —Q. Shall the lands pass? Had he not been admitted they clearly would not. *Smith v. Trigg*. But I am of opinion that the admission shall relate to the death of the ancestor.

(s) See 2 *Durnf. & East*, 484. *The King v. Lord of the manor of Hendon*, and *Gilb.* 285. and *Watk.* No. cxxxi. p. 458. and see *post.* [294]

But his admission shall relate to the date of the surrender.

But although the surrenderee has no estate in the premises till actual admission, yet such admission, on being actually made, shall relate to the surrender and operate as from its date (t).

So soon as the surrender is made, so soon is the property bound* : and from that time shall the estate be deemed in the surrenderee by relation, on the admission being actually made.

Should the surrenderor die in the interim, *i. e.* between the surrender and admission, he would, indeed, die seised of the premises; yet it would not be of an absolute, but of a defeasible estate of inheritance; and consequently, though his heir would take by de-

(t) 1 *Salk.* 185. *Benson v. Scott.* See *post.* ch. 6. and 5 *Burr.* 2785. 2787. *Vaughan d. Atkins v. Atkins.* Disseisee devises and then re-enters—good. See *Powell on Devises*, 185, &c. 4 *Burr.* 1691. Grant before attornment—then attornment made—grant good. *Viner, Relation*, (B.) pl. 4.

* [And on a surrender of copyholds, therefore, for securing an annuity, the *admittance* of the surrenderee, though it immediately ensue, need not be memorialized. 1 *Price.* 38. *Doe d. Naylor v. Stephens et al.*]

sent, and his widow be entitled to dower, yet, on the admission of the surrenderee, would such estate be defeated; and, of consequence, the descent and title to dower would be defeated also (u).

And, on the other hand, should the surrenderee die before admission, his heir would be entitled to admission; and when admitted would be in by descent: and the widow of the surrenderee shall have her free-bench (w). [104].

So, on such admission, all mesne acts of the surrenderor (x) and of the lord * would be defeated, and those of the surrenderee effectuated and confirmed.

In ejectment, therefore, such surrenderee may, after admittance, lay his demise in

(u) See *ante*, p. [86]. *Carth.* 275. *Benson & Scott.* 3 *Leo.* 385. S. C. 1 *Salk.* 185. S. C. 12 *Mod.* 49. S. C. 5 *Burr.* 2764. 2787. *Vaughan d. Atkins v. Atkins.*

(w) See *Gillb. Ten.* 220. 288. 5 *Burr.* 2764. *Vaughan d. Atkins v. Atkins*, [*Watk. on Desc.* [32].]

(x) *Carth.* 276. *Benson & Scott.*

* 2 *Saund.* 422. *Granth. v. Copley. et al.*

the interim (*y*), and recover the mesne profits from the time when the surrender was made (*z*).

If one joint-tenant surrender to the use of his will, his devisee shall take : for the joint-tenancy would be severed from the time of the surrender (*a*).

If a copyholder surrender to the use of himself for life, with remainders over ; and the ultimate limitation be to himself and his heirs ; and *afterwards*, surrender to the use of his will, and actually execute such will ; and *after* such surrender and will made, he be admitted on the *former* surrender, it will be no revocation of his will ; but his admittance shall relate to the time

(*y*) 1 *Durnf. & East*, 600. *Holdfast d. Woollams v. Clapham*. [An admittance of the surrenderee before trial, will maintain ejectment brought by him before admittance, upon a demise laid between the time of surrender and admittance. 16 *East*, 208. *Doe d. Bennington v. Hall*.]

(*z*) See 2 *Wils.* 15. *Roe d. Jeffereys v. Hicks*.

(*a*) *Cro. Jac.* 100. *Porter v. Porter*. *Co. Lit.* 59. b. 1 *Brownl.* 127. *Allen & Nash*.

of such former surrender, and so be *prior* to the will (b).

Again, as the commissioners of a bankrupt [106] are authorized by statute to convey his copyhold estates by bargain and sale enrolled without the intervention of a surrender; the admission of the vendee shall have a similar relation, and, therefore, it may not be improper to notice it here *.

(b) See the case of *Roe d. Noden v. Griffiths*. 1 *Just. Blackst. Rep.* p. 605. and 4 *Burr.* 1952. [But if a copyhold be surrendered to the use of a stranger, a surrender to the use of his will, made by the surrenderee before admission, is absolutely void and of no effect, and cannot be rendered valid by his subsequent admittance. 11 *East*, 246. *Doe d. Tofield v. Tofield*. And see 16 *ibid.* 210. Note, also, that if the devisee of a copyhold or customary estate, which had been surrendered to the use of the will, die before admission, his devisee, though afterwards admitted, cannot recover in ejectment; for such admittance has no relation to the last legal surrender; but the legal title remains in the heir of the surrenderor. 7 *East*, 8. *Doe d. Vernon v. Vernon*. And further, that a person taking a copyhold, not as heir at law, or as a purchaser for a valuable consideration, but merely as a volunteer under a parent's will, and not having been admitted, cannot devise the same. 1 *Madd.* 627. *Wainewright v. Elwell*.]

* And see 43 *Geo.* 3. c. 99. s. 52. as to *Collectors*.

On the vendee's admittance, he shall be in from the date of the bargain and sale. Till such bargain and sale be executed the copyhold cannot be supposed to pass from the commissioners; but to the time on which it is executed shall the subsequent admission relate: and consequently, the widow of the bankrupt, in case the bankrupt die after such bargain and sale, and before the admission of the vendee, shall not be entitled to her freebench; but her freebench, and all mesne acts of the bankrupt, shall be avoided on such admission being made (e).

We have already seen that the surrender is now only the formal mode of transfer, containing the designation by the tenant of the person he wishes to succeed him in the tenancy. The copyholder has a right to nominate whom he pleases for that purpose, (except indeed as to those persons who are legally incapacitated to take): and the lord

(e) See Sir Wm. Jones, 451. *Parker v. Blauvelt*, and *Cro. Car.* 568. S. C.

is bound to admit such nominee: he is compellable by decree in equity, and by mandamus at law (*f*). He is merely an instrument: no interest, no estate, passes to him by such surrender: he has only a power to admit according to the directions of the surrenderor. He cannot vary, nor charge, nor any way affect the estate or interest about to be transferred.

Lord is compellable to admit according to the surrender.

[106]

If he admit otherwise, the surrender shall control it. And the surrenderee shall be in by the surrenderor, and not by the lord (*g*).

And the surrenderee shall be in by the surrenderor.

As to this latter position, indeed, it has been declared in some books, that the surrenderee shall be in by the lord, and not by the surrenderor (*h*): but we may justly say

(*f*) See *ante*, p. [61-2] and *post*. ch. 6. Of Admission.

(*g*) *Co. Copyh.* s. 41. *Tr.* 92. 3 *Burr.* 1542. 4 *Burr.* 1961. 5 *Burr.* 2786. [And *vid. infra*, p. [282-3].]

(*h*) 1 *Roll. Abr.* 627. *Disc.* (I.) pl. 9. 1 *Lord Raym.* 627. and 1 *P. Wms.* 17. *P. Holt*, C. J. in *Fisher & Wigg.* 2 *Ves.* 257. *P. Hardwicke*, C. in *Rigden & Vallier.*

with Lord *Mansfield*, that such declaration “ is contrary to truth and to all the authorities (i).” But we shall treat more at large on these points in the chapter on Admission.

Description
of the surren-
dere.

We come now to the consideration of the description of the person to whose use the surrender is to be made: and as the end of such description is the ascertainment of the person, if the description be such as to answer that end, if from the description given the person may be ascertained, it is all that is requisite.

[107]

For it is not necessary, says Sir *Edward Coke*, that, upon surrenders of copyholds, the name of the party to whose use the surrender is made, be precisely set down; but if by any manner of circumstance the grantee may be certainly known, it is sufficient, and therefore a surrender made to the Lord Archbishop of Canterbury, or the Lord Mayor of London, or the high Sheriff of Norfolk, without mentioning either the

(i) 5 *Burr.* 2786. in *Vaughan d. Atkins v. Atkins.*

christian name or surname, is good enough, and certain enough; because they are certainly known by this name, without further addition. So, if I surrender to the use of the next of my blood; to the use of my wife; to the use of my brother or sister, having but one brother or one sister; these surrenders are good without any additions, because the grantee may certainly be known by the words.

If I surrender to the use of my son W. having more sons than one of that name; yet by an averment this uncertainty may be helped (*k*).

(*k*) And see 5 Co. 68. b. [Collateral circumstances may also be called in to relieve uncertainty: as in a case where *John Lealand* surrendered to the use of *Joseph Lealand* and *John Lealand his son*, for their lives and the life of the survivor, remainder to the heirs of the body of the *said John Lealand, son of Joseph Lealand*, remainder to the right heirs of the *said John Lealand*; it was held, that the ultimate remainder was meant for the right heirs of John the surrenderor; any uncertainty that might have arisen from a similarity of names being precluded, as well by the circumstance of John the surrenderee being before described with the addition of *the son of Joseph*, as by that of the mani-

So, if I surrender to the use of him who shall come next into St. Paul's after such an hour; whose fortune soever it is to come first, the lord must admit him, and I shall never avoid it. The same law is, if I surrender to the use of him, that I. S. shall nominate, or that I myself shall nominate, to the lord at the next meeting (*l*).

[108] But if I surrender to the use of my cousin or my friend; this is so general and so uncertain, that no subsequent manifestation of my intention can any way strengthen it:

fest futility of giving John the surrenderee an estate tail, and afterwards a fee in succession. Supposing, however, that the intention of the surrenderor could not in this case have been ascertained, it would have been sufficient to support an ejectment for his right heir to have shewn that it was quite uncertain on the face of the surrender for which of the John Lealand's right heirs the ultimate remainder was designed: for in order to defeat his title, it must have been distinctly made appear, that such ultimate remainder passed out of the surrenderor. See 9 *East*, 405. *Roe d. Hucknall and others v. Foster*, and *supra*, p. [95] note (*x*).]

(*l*) So a person may surrender to such use as the lord shall name, *Lit. Rep.* 26. or as A. shall by will appoint. See 2 *Vern.* 583. *Otway v. Hudson*.

So, if three persons surrender to the use of three or four of St. Dunstan's parish, not naming the parishioners by their names; this surrender is utterly void.

And so, if I surrender in the disjunctive to the use of I. L. or I. N. this is insufficient for the uncertainty (*m*).

Again: as to the limitation of the use with respect to the creation of estates, we must remark, that the same words are, generally speaking, necessary to the creation of an estate in fee or in tail as are requisite to create such estates at common law (*n*).

Limitation of estates, by what words.

For, in these cases, at least, a surrender is to be considered as a common law conveyance, and is not entitled to the same favourable construction as a will. And, therefore, according to the doctrine of Lord Kenyon, in the case of *Wright v. Kemp* (*o*), un-

(*m*) *Co. Copyh.* s. 35. *Tr.* 80. 82.

(*n*) *Co. Copyh.* s. 49.

(*o*) 3 *Durnf. & East*, 473. and see *Lovell v. Lovell*. 3 *Atk.* 11. *Idle v. Cooke*. 1 *P. Wms.* 70. S. C. in *Salk.* Lord Raymond, &c. and *Sutton v. Stone et al.* 2 *Atk.* 101.

Heirs.

Heirs of the
body.

[109]

less the surrenderor uses the language which will confer a legal estate, it cannot be conferred. In deeds, certain legal phrases must be used, in order to create certain estates; as the word "heirs," to create a fee; and "heirs of the body," to create an estate tail. But beyond that, affirmed his lordship, I would say, with Lord *Hardwicke*, that there is no magic in particular words, further than as they show the intention of the parties.

sibi & suis.

But though, generally speaking, the same words are requisite to create certain estates of copyholds as are necessary to the creation of the same estates of freehold lands, yet, by the force of a particular custom, they may be otherwise created: thus, by special custom, an estate of inheritance may be created by the words *sibi & suis*; or *sibi & assignatis*; or the like (*p*). So, in some manors the words, "sequels in right," are used instead of the technical word "heirs";

(*p*) 4 Co. 29. b. *Bunting & Lepingwell. Kitch.*
102. b.

and in others in addition to it; as “to A. his heirs and sequels in right.”

Sequels in right.

Again, though on a surrender being made and no use expressed, the law will presume it to be a relinquishment of the surrenderor’s interest, and so for the benefit of the lord (*q*); yet, if a surrender be so made, such presumption may be rebutted by a subsequent act, or precluded by the particular custom of the manor.

No use expressed, but explained by admission.

Thus a custom for the lord to grant in fee, where there is no use expressed, is good (*r*). So if no use be expressed and the surrenderor accept a new admittance; the surrender shall be intended to have been originally made to such use as is specified in the admittance, and the presumption that it was for the benefit of the lord shall be rebutted by this explanatory act (*s*).

If a surrender be made to the use of a [110]

(*q*) *Ante*, p. [92].

(*r*) *Cro. Eliz.* 392. *Brown v. Foster*.

(*s*) Cases at the end of *Poph.* 125. *Brook’s case*.

^a *Roll. Abr.* 67. *Grants.* (K.) pl. 18. S. C.

To A. generally he shall take only for life.

stranger generally, and there be no special custom prescribing the estate he is to take, nor any explanatory act to enlarge the estate, he shall have it only for his life (*t*).

Surrender to be construed as a conveyance at common law.

Case of *Fisher* and *Wigg* examined.

There is, indeed, a case which has been frequently acknowledged as an authority with respect to the construction of a surrender, which appears difficult to reconcile with the doctrine before advanced, that a surrender is to be construed as a conveyance at common law: it is that of *Fisher* and *Wigg* (*u*).

The point in that case was, whether a surrender to the use of *A. B. and C.* and their heirs *equally to be divided* between them, &c. should create a joint-tenancy or a tenancy in common: and it was determined by *Turton* and *Gould*, Justices, against *C. J. Holt*, that it should be a tenancy in common.

(*t*) *Co. Lit.* 59. b.

(*u*) 1 *Lord Raymond*, 662. 1 *P. Wms.* 14, &c. and see 1 *Wils.* 341. *Cowp.* 660. 2 *Ves.* 256-7. 3 *Atk.* 734.

And Lord *Hardwicke*, in the case of *Rigden* and *Vallier* (*w*), expressed a greater satisfaction with the arguments of the two justices than with those of Lord *Holt*. Though he seemed, in that of *Lovell* and *Lovell* (*x*), to be of Lord *Holt*'s opinion, that a surrender shall be construed as a deed.

Now, it is laid down by Lord *Hardwicke* [111] himself (*y*), that in conveyances at common law, the words, *equally to be divided*, will not make a tenancy in common. If a surrender, therefore, is to be construed as a conveyance at common law (*z*), such words cannot make a tenancy in common in a surrender. A surrender must either operate as a conveyance at common law, or not as a conveyance at common law ; if it *does* operate as a conveyance at common law, then the estate must be in joint-tenancy.

A distinction, indeed, has been drawn,

(*w*) 3 *Atk.* 734. and see 2 *Ves.* 256-7.

(*x*) 3 *Atk.* 11.

(*y*) 1 *Ves.* 166. in the case of *Stone v. Heurtly*, and 2 *Ves.* 257. in *Rigden v. Vallier*.

(*z*) See *ante*, p. [99]

with respect to conveyances at common law and deeds to uses. And Lord *Hardwicke*, in the case of *Rigden and Vallier* (a), drew a further distinction between words of *limitation* and words of *regulation or modification* of an estate. But, then, it is observable, he confined this distinction to *deeds to uses; deeds at common law*, therefore, stand unaffected; and a surrender is to be construed *as a deed at common law, and not as a deed to uses*. In one thing, said Lord *Hardwicke*, *Holt* was certainly right, that a surrender of copyhold lands to uses is *not* to be considered on the foot of an use or trust (b). If, therefore, a surrender is not to be considered as an instrument creating an use, but properly and strictly as a common law conveyance, this distinction does not apply: and, consequently, such surrender must receive the same construction as a deed at common law; and consequently, also, if the words “to be *equally divided*,” will *not* make a tenancy in common in a conveyance at common law, they

[112]

(a) 2 *Ves.* 257.

(b) 2 *Ibid.*

cannot, according to the doctrine laid down even by Lord *Hardwicke* and other opponents of Lord *Holt*; themselves, create a tenancy in common in a surrender. And, therefore, either the case of *Fisher* and *Wigg*, though so repeatedly affirmed to be authority, must be given up as no authority at all, or we shall not be warranted in laying it down as law, though it incontrovertibly has been laid down as law, that a surrender is to be construed as a common law conveyance.

The next matter to be considered, with respect to the construction of a surrender, is the *habendum*. It having been the subject of much controversy, whether a person who was not named but in the *habendum* should take.

When a person named only in the *habendum* shall take.

And as to the *habendum* also, several distinctions have been made: as whether such *habendum* be in an admission on a surrender or on a voluntary grant: whether there be any custom or not in the manor prescribing, or at least warranting the form: and whether any one be named before the *habendum*, and then the *habendum* be to

such person with others, or whether there be no person before named.

[113]

If a surrender, therefore, be made without expressing any use, and afterwards the surrenderor is admitted, *habendum* to him and his wife and the heirs of their bodies, the wife shall take an estate tail as well as the husband: for as the surrender was general, the subsequent admission shall enure as an explanation of the intent of the surrenderor, who shall now be considered as having surrendered to the use of himself and his wife, and their heirs, &c. according to the admittance (c).

But if the lord make a *voluntary grant* to a person, *habendum* to him and his wife and the heirs of their bodies; the wife shall *not* take: and that not only because she is not named in the premises, but also because there is no preceding surrender to direct or guide

(c) 2 *Roll. Abr. Grants*, p. 67. (K.) pl. 18. *Brookes v. Brookes*.

the construction of such grant, by which only the estate could pass (*d*).

Again : a particular form of admission or grant may be good, in some manors, from established usage, which, without such usage, would not be good. Thus it was observed by *Holt*, C. J. in the case of *Fisher and Wigg* (*e*), that the resolution before noticed in *Rolle* (*f*), was founded upon the custom of the manor. And he affirmed, that he knew manors where grants had been made to *R. habendum* to *A. B. C.* and *D.* where the first named took the whole for his life; and so every one in remainder in their order (*g*). [114]

For where long usage has established a peculiar form, that form should be complied with. And we find it noticed in *Croke's James*, that, with respect to this instance

(*d*) *Ibid.* pl. 19. See also *Cro. Eliz.* 323. *Downs v. Hopkins*.

(*e*) 1 *Lord Raym.* 627.

(*f*) See the last page.

(*g*) 1 *Lord Raym.* 627.

of the *habendum*, in many manors there were no other forms of grant or limitation (*h*). And, in the case of *Downs v. Hopkins*, in *Croke's Eliz.* (*i*), such *habendum* is said to be common in copies. And, accordingly, *Holt* said, in the case of *Fisher v. Wigg* (*k*), that if a custom prescribe a certain mode to pass estates, and many grants have been made in the manner so prescribed, such grants will be good.

The next distinction is, whether any person be named before the *habendum* or not: for if there be, as to *A. habendum to A. and B.*; *B.* it is said, shall not take (*l*), unless it be by a particular custom authorizing such mode of grant; as in the instance before given, to *R. habendum to A. B. C. and D.* where the first named took the whole for his life, and so every one in remainder in their order (*m*). But we may observe, that

(*h*) *Cro. Jac.* 434. *Brookes v. Brookes et al.*

(*i*) *Cro. Eliz.* 323.

(*k*) 1 *Lord Raym.* 627.

(*l*) See 2 *Roll. Abr.* 67. *Grants*, pl. 19, 20, 23. and see *Hob.* 313. *Windsmore v. Hobart.*

(*m*) 1 *Lord Raym.* 627. and *ante*, p. [113].

a person may take by a deed at common law by way of remainder, though he be not named in the premises with him to whom the estate is first limited (n). [115]

If the *habendum* be to *A.* and *B.* and neither be named in the premises, they shall both take (o): and this, perhaps, may hold as to a deed (p).

An estate cannot arise by implication in a surrender, any more, it is said, than in a deed at common law; as to the use of the second son of the surrenderor after the death of the surrenderor and his heirs: for the surrenderor shall not have an estate tail (q). Implication.

Yet such a limitation may be good by

(n) *Cro. Jac.* 563. *Greenwood v. Tyler.*

(o) See 2 *Roll. Abr.* 67. pl. 18. *Brookes v. Brookes.*
Cro. Jac. 434. S. C. and see *Gilb. Ten.* 259.

(p) See *Gilb. Ten.* 259.

(q) 1 *Brownl.* 127. *Allen & Nash.* *Cro. Car.* 366.
Seagood v. Hone & Ux. and see *Gilb. Ten.* 259, 60.
Fearne, 416. 418.

reason of the special custom of a particular manor, according to *Hollsworth's* case (*r*).

Repugnant
clause.

If, on a surrender, the uses be at first well limited, and afterwards a repugnant clause be inserted, such clause shall not vitiate the preceding limitations, but be rejected as void and nugatory (*s*).

Of a surren-
der to com-
mence in
futuro.

[116]

Fee upon a
fee.

Whether a surrender may be made to commence *in futuro*, and whether a fee may be limited upon a fee in a surrender of copyholds, will be considered in a subsequent chapter (*t*).

Surrenders on
condition.

A surrender may be made on condition ; and this is most usually done by way of mortgage*. The condition should always immediately follow the surrender, and be carefully inserted in the court rolls ; and it is then thus entered : the surrender is made

(*r*) *Clayton's Rep.* 21. *ca.* 36.

(*s*) *Cro. Car.* 367. *Seagood v. Hone & Ux.* and *Gilb. Ten.* 259.

(*t*) Ch. 5. Of Remainders, Executory Interests, and Trusts.

(*) [Equitable lien on copyhold estate by a deposit of the copy of court roll. See 19 *Ves.* 202. *Ex parte Warner.*]

in the general form, “to the use of *A. B.* and his heirs,” with a proviso to the following effect :

“ PROVIDED NEVERTHELESS, and upon ^{Entry on the roll.} condition, that if the said *C. D.* his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, to the said *A. B.* his executors, administrators, or assigns, the full sum of ——— of lawful money of Great Britain, with lawful interest for the same, on the ——— day of ———, which will be, &c. without any deduction or abatement whatsoever, for, or in respect of any taxes, rates, charges, assessments, or impositions whatsoever, then the above surrender to be void, else to be and remain in full force and virtue.”

The proviso or condition is often contained in a deed entered into at the time the surrender is made ; which deed is termed a *defeasance*. But this mode should never be resorted to when possible to be avoided. As the surrender is absolute on the rolls, should the defeasance, a separate instrument, be lost, the proof of the condition might be difficult, and frequently impossible. [117]

Besides, the title to the lands should always appear on the court rolls of the manor, and not be dependent on any private deeds or agreements. If a defeasance be entered into, it ought always, for this reason, to be entered on the rolls.

Delay of admittance in case of mortgage.

As the surrenderor continues tenant to the lord till the admission of the surrenderee*, and as the surrender is made, in the case of a mortgage, only as a security for the money advanced, the admission is usually delayed. Or, if the surrender be made out of court, it is frequently suffered to become void for want of a timely presentment, when a new surrender is taken (u).

Acknowledgment of satisfaction, and vacation of surrender.

In case the money be paid within the time prescribed by the condition, the sur-

* 5 *East*, 130. 8 *Ves.* 30.

(u) See 2 *Ves.* 300. *Fawcet v. Lowther*. [Copyhold estates surrendered to the use of mortgagees, but they had not been admitted: the mortgagor devising them must surrender to the use of his will. 8 *Ves.* 30. *Kenebel v. Scrafton*. S. P. 5 *East*, 132. *Doe d. Shewen, wid. v. Wroot*. But by st. 55 Geo. 3. c. 192. such surrender is now rendered unnecessary.]

renderee acknowledges the repayment and authorizes the steward to vacate the surrender. Such acknowledgment of satisfaction, the warrant to vacate, and the actual vacation of the surrender are then entered on the rolls; on which the surrenderor becomes possessed of his former estate, and is in *in statu quo prius*, without any re-admission or fine (w).

If the acknowledgment be made in court, let the homage find the surrender in the usual way, and then say, Acknowledgment in court.

“AND NOW AT THIS COURT came the said C. D. in his proper person, and acknowledged to have received full satisfaction and payment of the said sum of ———, and all interest for the same, according to the form and effect of the said surrender. *And thereupon* the said A. B. and C. D. prayed that the said surrender might be vacated; *And* the said surrender is vacated accordingly.” [118]
Entry.

(w) *Cro. Elix.* 239. *Simonds v. Lawnd.*

Acknowledg-
ment before
the lord.

If it be made out of court, before the lord or steward, say, :

“BE IT REMEMBERED, that on the —— day of ——, the within-named *C. D.* came before me —— (lord or steward of the manor of Fairhurst, *as the case may be*) ; and acknowledged to have received of the within-named *A. B.* all principal and interest secured to him by the within surrender : and requested that the said surrender be vacated accordingly.”

Taken, &c.

C. D.

E. F. lord or steward, of, &c.

The caption
certified.

This memorandum should be endorsed on the copy of the surrender, and signed by the lord or steward, and the party acknowledging satisfaction : and at the next court it should be presented ;—thus,

Entry on the
roll.

“AND ALSO at this court it is certified, by the said steward, and thereupon the homage present, that out of court, and since the last court, *C. D.* one of, &c. came before him, the said steward, in his proper person,

and acknowledged," &c. (*as in the memorandum*) "Of which acknowledgment and request a *memorandum* was duly made, and signed by the said *C. D.* and the said steward, and now exhibited in open court ; therefore, the said surrender is accordingly vacated and annulled."

[119]

If the acknowledgment cannot be made in court, or before the lord or steward, the acknowledgment and warrant (on the requisite stamp) may be thus :

"I, *C. D.* of, &c. hereby acknowledge to have this day received of *A. B.* &c. the sum of — in full satisfaction and discharge of all principal and interest secured to me by a conditional surrender, made by the said *A. B.* of certain copyhold premises by him then held of the manor of Fairhurst, to my use, at a court held on the — day of — last ; and therefore I request and authorize you, as steward of the said manor, to vacate such surrender accordingly: *Witness* my hand, &c."

Warrant to vacate.

To *E. F.**C. D.*

Steward of the manor
of Fairhurst, in the
county of —

Such is the formal mode of vacating a conditional surrender; but such formal mode is by no means a matter of necessity. The condition is express; that on payment of the money the surrender shall be void. On the money, therefore, being actually paid within the prescribed time, the surrender
 [120] becomes void *ipso facto*. An acknowledgment of satisfaction by the mortgagee is sufficient: and such acknowledgment is generally written in the margin of the roll immediately against the surrender, and signed by the surrenderee.

Release of
condition.

If the surrenderee has been regularly admitted, and the condition be not forfeited, yet the surrenderor may release the condition by deed. For the surrenderee, on his admission, is become tenant to the lord, and the interest of the surrenderor may be relinquished by his own act: hence no fine is payable on that event (*x*).

Release of
equity of re-
demption.

So, on breach of the condition, the sur-

(*x*) *Cro. Jac.* 36. *Hull and Shar-brook and post.*
ch. 7. Of Fines.

surrenderor may release his equity of redemption; and no fine will in consequence be due (y).

And here we may observe, that the surrenderee of a copyhold is an assignee within the statute 32 Hen. 8.; and may, therefore, take advantage of a condition broken (z). So, when such condition is forfeited, the equity of redemption shall descend to the customary heirs or sequels of the surrenderor, as the legal estate would have done (a).

Who may take advantage of the condition.

If the surrenderee be admitted, and the condition broken, the estate becomes absolute. On condition broken, the estate be-

(y) See *post.* ch. 7. Of Fines.

(z) *Bull. Nisi Prius.* 161. *Watk.* No. lxxxiii. to *Gilb. Ten.* p. 429. and the authorities there referred to.

(a) 2 *Ves.* 300. *Fawcet* and *Lowther*. On breach of the condition, the lord may insist upon the admission of the mortgagee. See 2 *Vern.* 367. *Tredway v. Fatherly*. But *quære*. For he can't compel the surrenderee to be admitted without special custom. See *Baspool v. Long, &c.* Mortgagee may bring his bill for foreclosure before admittance. 2 *Atk.* 101. *Sutton v. Stone*.

[121]
comes abso-
lute, and a re-
surrender will
give a new
estate.

lute, and, in case the money be afterwards paid, there must be a re-surrender by the former surrenderee; and a regular admission of the original surrenderor.

The estate is now changed. On the breach of the condition the old estate was gone: on the re-surrender, the person to whom it is made takes a new estate. If the former estate, the subject of the first surrender had been derived *ex parte materna*, yet the new estate received by the re-surrender will be taken by purchase, and shall descend to the *paternal* heirs (*b*). Taking therefore a new estate, he must necessarily be re-admitted, and pay a fine (*c*).

Remainders.

A copyholder may surrender to the use of a particular person with remainders over to others: but the doctrine of Remainders will be considered in a future chapter (*d*).

(*b*) See 12 Mod. 49. *Benson & Scott*, and *Harman & Us. v. Morgan*, now reported in 7 Durnf. & East, 103.

(*c*) See *post.* chap..7. Of Fines.

(*d*) Chap. 5.

The doctrine of Entails of Copyholds also, Entails.
will be treated of at large, under that title (*e*).

So, a copyholder may surrender to such Surrender
uses as he shall by will appoint, without a to the use
special custom for that purpose*; and, in- of a will.
deed, if a special custom were alleged to
restrain him from doing so, it could not be
supported (*f*).

By special custom, copyholds may be de- [122]
vised without such surrender (*g*); but by the
general law of copyholds a surrender is ab-
solutely essential (*h*). The statutes of *Henry*

(*e*) Chap. 4.

*[And accordingly, in *Church v. Mundy*, 15 *Ves.* 396.
on the question of supplying a surrender in favour of
creditors, the LORD CHANCELLOR said, that the court
would hold that there might be a surrender to the use
of the will, though no instance could be found upon
the records of the manor. See *infra*, p. [139].]

(*f*) 3 *Bro. Chanc. Cas.* 286. *Pike v. White*.

(*g*) *Co. Entries*, 124. b. *Hills v. Hills*. Manor of
Bewdley in Worcestershire, and *Carter*, 71. *Smith v.*
Paynton. *Littlel. Rep.* 26. cites *Wrot's case*.

(*h*) *Co. Copyh.* s. 36. *Tr.* 83. 4 *Co.* 24. b. *Murrell*
and *Smith*. [But by st. 55 Geo. 3. c. 192, such sur-
render is now rendered unnecessary.]

the Eighth and *Charles* the Second, relative to wills, do not affect them (i).

Entry of on
the roll

Such surrender is made in the common form; "to such uses, ends, intents, and purposes," or "to the use of such person or persons, and for such estate or estates, ends, intents, and purposes, as the said *A. B.* in and by his last will and testament, shall direct, limit, or appoint."

The estate re-
mains in the
surrenderor.

If a copyholder surrenders to the use of his will, the estate, notwithstanding, remains in him and not in the lord (*k*), and, therefore, he may surrender it again to a stranger without a formal revocation of the surrender to his will (*l*).

Part unde-
vised will
descend.

So, if he die without a will, or, making a will, devise only a particular interest, as to *B.* for life, or in tail, the whole in the one

(i) 2 *Atk.* 37. *Tuffnell* and *Page*. 1 *Ves.* 225. *Attorney-General v. Andrews*. *Harg.* N. (1) and (3) to *Co. Lit.* 111. b.

(k) 4 *Co.* 23. a. *Gravener* and *Ted*.

(l) *Ante*, p. [94] *Cro. Eliz.* 442. *Fitch* and *Hochly*.

case, and the undisposed of part in the other, will descend to his customary heirs (*m*). And so also, if a copyholder surrender to the use of his will and devise to his customary heir, and die; the heir shall be in by descent (*n*); for when an heir has that estate devised to him which he would have taken without such devise, he shall take by descent, whether it be a freehold or a copyhold estate. In such case, therefore, the devise is inoperative, and the heirs shall take as if there had been no devise at all. And if there had been no devise at all, the estate continuing in the surrenderor would have descended, as if no surrender had been made: for such surrender and testamentary declaration of uses will *not* make a new estate (*o*).

[123]

If a copyholder surrender certain lands to Exchange.

(*m*) *Cro. Elix.* 442. *Fitch and Hockly*, and *ante*, p. [94].

(*n*) *Strange*, 487. *Smith v. Trigg*, *Lutw.* 797. *Clark v. Smith*, and case of *Hurst v. Morgan*. *East*: 28 *Geo.* 2. 1755, in *Chanc.* and on *Certif.* from *B. R.*, 27 *Nov.* 1759. *MS.* [See also *Doe. d. Pratt v. Timins*. 1 *Barnes. & Ald.* 530].

(*o*) See *ante*, p. [95].

the use of his will, and then exchange those lands for others ; the lands so taken in exchange must be surrendered to the use of his will, or they cannot pass (*p*).

Ultimate limitation of the old estate.

But, if a copyholder seised in fee, surrender to the use of his will, and afterwards surrender to particular uses with the ultimate limitation to his own right heirs, he shall be in of his old estate ; and may devise the reversion without any fresh surrender or admission (*q*).

[124]

If a copyhold, however, descend to the customary heir, such customary heir must surrender it to the use of his will, or he cannot devise it (*r*).

An equity may be devised without a surrender.

But where a person has only an equity in

(*p*) 1 *Bro. Chanc. Cas.* 588. *Frank v. Standish*, in *Scac.* cited in *Not.* [But such surrender is by statute 55 *Geo.* 3. c. 192, now rendered unnecessary.]

(*q*) 1 *Fearne's Cont. Rem.* 90. *Thrustout d. Gower v. Cunningham*, and 2 *Just. Blackst. Rep.* 1046, S. C. [And *vid. supr.* p. [94] note (*l*).]

(*r*) See *Str.* 487. *Smith v. Trigg*, and *ante*, p. [102] [121]. [But by stat. 55 *Geo.* 3. c. 192, he may now devise without a previous surrender.]

copyholds, such equity will pass by devise without a surrender: for of an equity no surrender can be made; nor can the devisee require any admittance, as he will not become tenant to the lord (s).

Yet this is to be understood of such an equitable interest as would have been devisable had it been of freehold lands; thus, if it be an equitable estate tail, it will not pass. For, as in the case of an equitable estate tail in freehold lands, a fine* or recovery is requisite in order to destroy it (t), though it hath been formerly held otherwise (u); so in that of copyholds, the entail must be first docked, as if it were a legal entail: and the estate will not pass merely by the devise (w).

If it be of a devisable estate.

(s) See 3 *Atk.* 73. *Carr v. Ellison.* 1 *Bro. Chan. Cas.* 480. [*Macnamara v. Jones.* 3 *P. Wms.* 360. *King v. King*, and *Mr. Cox's* note (1) and *post.*

* 1 *Cruise*, 190.

(t) 1 *Bro. Cha. Ca.* 72. *Boteler v. Allington*, and *Salvin v. Thornton.* cited *Mr. Cox's* note (2) to 1 *P. Wms.* 91. *Legate v. Sewell.*

(u) *Preced. in Chanc.* 228. *Woolnough v. Woolnough.*

(w) 1 *Hen. Blackst.* 446. 461. *Roe v. Lowe.*

Accession of
the legal fee.

[125]

But, if a copyholder, having an equity only, (as if he be a surrenderee,) make his will and devise; and after making his will, he take the *legal* estate by descent, and then die; yet the equity will, it seems, be bound. Had the legal fee not descended to him, the equity would certainly have passed (*x*). And it has been determined, that, as to *freeholds*, the accession of the *legal* interest will be no revocation of a will; but the person having the legal fee shall still be subject to the equity (*y*).

Now where the rights and emoluments of the lord are not affected, there is no reason why copyholds should not be within the same rules. An uniform standard should be fixed; and copyholds follow closely on the rules of freeholds (*z*).

(*x*) See the case of *Dary v. Beversham*, or *Beards-ham*, *ante*, p. [102].

(*y*) See *Parsons v. Freeman*. 1 *Wils.* 308. 3 *Atk.* 741. 804. and *Dougl.* 718. *Doe v. Pott*. 3 *P. Wms.* 309. 1 *Ves. Jun.* 254-5.

(*z*) See as to *Recoveries*, last page, and 5 *Durnf. & East*, 104. *Roe d. Crow v. Baldwere*. *Resulting Use*, *ante* p. [95] [98].

In this case the lord would not be injured. The *legal* fee, not passing by the will, descends to the heir of the testator. The person having the *legal* fee is still tenant to the lord*. And the *legal* estate can only be transferred by surrender and admittance. By the conveyance of the *equity* the *tenancy* is not altered.

The Court of Chancery would, therefore, I conceive, make the person having the legal interest surrender it according to the disposition of the equity.

By special custom, it is said, a feme covert may surrender to the use of her will with the assent of her husband (a).

Who may
surrender
to the use
of a will.

[128]

But, if a feme sole surrender to the use of her will, and afterwards marry, it will be

* See 5 East, 132. Doe d. Shewen v. Wroot, as to a surrender to the use of a mortgagee, and no admittance under it. The surrenderor cannot devise, having the *legal* estate. [But by stat. 55 Geo. 3. c. 192. he may now devise without surrender.]

(a) See *ante*, p. [63] &c.

a revocation, or at least a suspension of the surrender (*b*).

Joint-tenant.

A joint-tenant may surrender to the use of his will: and though such surrender be made out of court and not presented till after his death, yet the jointure will be severed; and the devise of his moiety will be good (*c*).

Presentment of a surrender to a will.

As to the presentment of a surrender to the use of a will, when made out of court, see *ante*, p. [84].

The surrender only embraces what the surrenderor has at the time of such surrender made.

As the testamentary instrument operates only as a declaration of the uses of a surrender, and as a person cannot surrender what he has not, it follows that, as such testamentary instrument cannot have any effect where no such surrender has been made†, so no such surrender can be made, when

(*b*) Heir before admission, *post*. [245.] Marriage a revocation of the will of a feme sole. See 4 Co. 60, &c. 2 P. Wms. 624. See also 1 Ves. 229. Case cited. C. B. 1747. and Ambler, 627. *George v.* —

(*c*) *Cro. Jac.* 100. *Porter v. Porter.* Co. Litt. 59. b. 1 *Brownl.* 127. *Allen and Nash.*

(†) [But see *infra*, p. [127] n. (*).]

there is nothing to convey. A person can only surrender that which he has in him at the time : hence no after-purchased lands can pass (d).

If a person possessed of several copyholds, surrender "*All* his copyhold tenements" to the use of his will, and, after such surrender made, purchase other copyhold lands, and then make his will and devise "*All* his copyhold tenements;" the devise will not operate upon the after-purchased lands. For,

Hence lands purchased after surrender made, will not pass.

[127]

(d) See 3 *Durnf. & East*, 365. *Goodtitle v. Morse*, and 6 *Durnf. & East*. 63. *Doe d. Ibbott v. Cowling & Ur*. In this latter case, *A.* tenant for life, surrendered all his copyholds in possession, reversion, &c. to the uses of his will. *Afterwards* the reversion in fee descended to him. *After* such descent, *A.* made his will, and devised all his copyhold estates, &c. The reversion did *not* pass, as it was not in him at the time of the surrender. See also 1 *Anstruther*, 11. *Morse v. Faulkener et al.* And in a case which was subsequently laid before me, where *B.* tenant for life, surrendered to will, and afterwards purchased the reversion in fee, which was surrendered to him, and to which he was admitted, and *after such purchase*, made his will and devised to *C.* in fee,—I gave it as my opinion that the estate did not pass by his will. [But see the next page *n.* (*).]

as he could not surrender what he had not at the time of the surrender, the after-purchased lands could not have been included in it; and no subsequent surrender was made (*).

Nor those purchased after making of the will, though before surrender.

And, in order that a devise may operate on a copyhold, it is not only necessary that the copyholder should be possessed of the lands at the time of making such surrender, but also that he be possessed of them at the time of making, or of the republication of the will: thus, if a person having several copyholds make his will, and devise "all his copyhold tenements," or "all his real estate," generally, and then purchase other copyhold lands; and afterwards, surrender "all his copyhold tenements" to the use of his will: the copyhold lands which were purchased after the execution of the will, though before the surrender, will not pass (e).

(*) But by stat. 55 Geo. 3. c. 192, a devise of copyholds is now made valid without a surrender to the uses of the will.]

(e) *Ambler*, 199. 1 *Durnf. & East*, 435. n. (f). *Spring d. Titcher v. Biles et al.* and *Harris v. Cutler*, there cited. But the surrender of after-purchased lands may be so framed as to refer to a disposition al-

But, if a person, having no copyholds at the time, make his will, and devise "all the rest and residue of his estate, of what nature, kind, or quality soever," and then purchase a copyhold estate and surrender it to such uses as he should by his last will appoint; and after such surrender make a *codicil*, reciting and *ratifying* the will; the copyhold estate will pass: for the codicil shall operate as a *republication*, and bring the will to the date of the codicil (f).

Codicil and republication.

If a copyholder, seised in fee, surrender to the use of himself for life, with remainders over, and the ultimate limitation to himself and his heirs; and *afterwards* surrender to the use of his will, and actually execute such will; and, *after* such surrender and will made, he be admitted on the *former* surrender, it will be no revocation of his will:

[128]

Subsequent admission shall operate by relation and not revoke, but support a will.

ready made. As if a copyholder surrenders them to the uses *declared*, or to be declared by his last will*. *A fortiori*; if he expressly refers to a specific instrument.

(f) *Dougl.* 716. n. (2). *Doe d. Pate v. Davy.* *Cowp.* 158.

* *Cowp.* 130. *Heylyn v. Heylyn.* And see 1 *Ves.* Jan. 486. *Barnes v. Crowe*, and 8 *Ves.* 286, &c.

but his admittance shall relate to the time of such former surrender, and so be *prior* to the will (*g*).

Will made
previously to
surrender.

If a copyholder surrender to such uses as he *shall* by his will appoint; the lands will pass by a will made *previously* to the surrender, if the testator was possessed of them at the time of such will being executed (*h*).

Testamentary
disposition
operates as an
appointment.

As a testamentary disposition of copyholds is only a declaration of the uses of the surrender, it operates as an appointment and not as a will (*i*).

And the ap-
pointee shall
be in by the
surrender.

And, as on a power of appointment being executed, when it relates to common-law property, the appointee shall be *in* under, and as if expressly named in, the instrument by which such power is created (*k*), so the devisee or

(*g*) 4 Burr. 1952. *Roe d. Noden v. Griffith*. 1 Just. Blackst. 605. S. C.

(*h*) 1 Durnf. & East, 435. *Spring d. Titcher v. Biles*, in note. And see 8 Ves. 285.

(*i*) 1 Bulst. 200. *Semain v. ———*. 2 Ves. 77. and see 3 Brown. Ch. Ca. 231.

(*k*) 2 Ves. 78. & 612. 2 Atk. 565. 568. *Cooke v. Duckenfield*, and see 1 Fearne, 99. Butl. n. (1) to Co. Litt. 299. b.

appointee named in the will or testamentary instrument, shall be in by the surrender as if expressly named. [129]

But as the testamentary instrument is ambulatory, and not effectual till the testator's death, if the devisee or appointee die in the testator's life-time, the appointment cannot take place (*l*).

Appointee dying in testator's life-time.

As, therefore, such testamentary instrument is to be considered as an execution of a power, and not strictly as a will, it is enough if made pursuant to the directions of such surrender ; and need not be executed, as a will is required to be executed, for the passing of freehold lands*.

What shall be such a will as to pass the copyhold.

If a person, therefore, surrender to such uses as he shall by will appoint, a will, though attested by two witnesses, or by one only, or not attested at all, will be sufficient to pass it (*m*).

Unattested.

(*l*) 2 *Ves.* 77. *Duke of Marlborough v. Lord Godolphin.*

* See 2 *Ves. Jun.* 204. *Habergham v. Vincent.*

(*m*) 2 *Atk.* 37. *Tuffnell v. Page.* 1 *Ves.* 225. *Attorney General v. Andrews.* 2 *P. Wms.* 258. *Wagstaff*

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So, where a copyholder made his will attested by *three* witnesses, and afterwards caused such will to be altered, by striking out several devises, and a memorandum to be written, that he had examined, perused, and approved of the will so altered; but did not republish it in the presence of *three* witnesses, but directed it to be written out fairly, and became delirious before it was returned, it was held sufficient, and a surrender decreed (n).

By parol.
Qy. Whether
the 19th sec.
of the 29th
Car. 2. c. 3.
relative to
nuncupative
wills does not
extend to co-
pyholds it be-
ing general?

And it should seem that a will by *parol* only would be sufficient for this purpose. A will by *parol* was good as to lands *devisable* by custom before the statute of frauds (o): and in the old writ of *ex gravi querela*, the custom was alleged generally, “to devise by last will.” It does not seem probable that a will in writing should be required of a burgess or villein, who were not permitted

v. *Wagstaff*. 2 Bro. Chanc. Ca. 58. *Carey v. Askew*. 2 Ves. Jun. 228. 232. *Habergham v. Vincent*. 2 J. Blackst. Rep. 1114. *Roe d. Gilman v. Heyhoe*. [And see 7 East, 299. *Doe d. Cook & Ux. v. Danvers*.]

(n) 2 Vern. 498. *Burkitt v. Burkitt*.

(o) See Co. Litt. 111. a.

even to have their children taught to read without a licence from the lord (*p*) till they were enabled by statute (*q*). The surrender of a copyhold is made "to such uses as *A. B.* shall by his last will appoint:" now I know of no law which says, that such last will must be in writing *. It has been noticed above,

(*p*) See *Paroch. Antiq.* 401.

(*q*) Stat. 7 Hen. 4. c. 17. *An. Dom.* 1405.

* The statute of frauds, (see 2 Bro. C. C. 58. *Carey v. Askew*,) requires all declarations of trusts to be in writing. And see n. 3. to *Co. Litt.* 111. b. But see also 1 Ves. Jun. 499, end of the case of *Barnes v. Crowe*, and *Prec. in Ch.* 5. in *Detenish v. Baines*. But note, that although the stat. of frauds says, that trusts or confidences may be declared or passed by will in writing, it does not say that this *will in writing* shall be signed by the testator, though it so anxiously prescribes the signatures in other instances. Before the stat. it was considered as sufficient that a will of freeholds should be in writing, though it was not written or signed by the testator. See 1 Siderf. 315. & 362. and *Comyns. Rep.* 452. *Pow. on Devises.* 30. and 60. And it should seem, therefore, that a declaration or assignment (or transfer) of such trust or confidence, would be good by a will in writing, though the will be not signed by the testator. See *Gilb. Rep. in Eq.* 260. 4 *Burn's Eccl. Law.* 106. ["We are now satisfied that a will to direct the uses of a surrender of a copyhold, or of a customary estate passing by

that where lands were devisable by custom, such devise need not be in writing: and it has been remarked also (r), that the statutes of Henry the Eighth and Charles the Second, do not embrace a devise of copyholds. If, therefore, neither the general custom, nor a positive law, nor the particular surrender, require such will to be in writing, what reason can be given why a will by *parol* should not be good?

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Of an equity.

So an equity in copyholds will pass by a will unattested, though such will cannot be considered on the same principle as a will of the legal estate (s).

Of customary
lands.

But a devise of *customary* lands, as contradistinguished from copyholds, must be exe-

surrender, is not within the statute of frauds, and needs not be signed, unless such signature be required by the terms of the surrender to the use of the will.”
Per Lord ELLENBOROUGH, C. J. in *Doe d. Cook & Ux. v. Danvers*, 7 East, 299.]

(r) *Ante*, [122].

(s) *Tuffnell v. Page*, as above.

cuted according to the statute of frauds ; because they do not pass by surrender (*t*).

If, indeed, a particular mode of executing a will of copyholds be prescribed, and certain ceremonies required by the surrender, such mode must be pursued, and such ceremonies observed, and the particular directions must be complied with, as to such will ; for otherwise it will not be an execution of the power.

The will as to form must pursue the directions of the surrender.

If a copyholder, therefore, surrender to such uses as he shall appoint by his last will “ to be by him signed, sealed, and published, in the presence of *three* witnesses,” his last will must be signed, sealed, and published, in the presence of three witnesses ; for otherwise the copyholds shall not pass (*u*). If it be attested by two witnesses only, it will not be sufficient : though a court of equity may, indeed, under certain circumstances, aid such

If three witnesses are required, it must be so attested.

(*t*) *Amb.* 299. *Hussey v. Grills* ; and see stat. 29 Car. 2. c. 3. s. 5. See also 1 *Ves.* 230. [and 7 *East*, 299. *Doe d. Cook & Ux. v. Danvers*.]

(*u*) *Amb.* 684. *Goodwin v. Kilsha* ; and see 2 *Ves.* Jun. 216.

defective execution, as in the case of other powers (*w*).

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Copyholds
pass by a ge-
neral devise.

And where copyhold lands are surrendered to the use of a will, they will pass by a devise of land *generally*; as “all my real estate, &c.” notwithstanding there are freeholds to answer the devise (*x*).

(*w*) See *Coffer v. Layer*. 2 P. Wms. 623.

(*x*) 2 Atk. 85. *Tendril v. Smith*. 1 Ves. 226. *Goodwyn v. Goodwyn*. 2 Ves. 164. *Byas v. Byas*. Otherwise if not surrendered. 1 Atk. 387. *Hawkins v. Leigh*. See *Supplem. to Vin.* Vol. 2. *Copyh.* (W. e.) 333-4. and 2 Ves. 164. *Byas v. Byas*. If a copyholder devise all his freehold and copyhold lands, *the copyhold part of which* (it is added) *he had surrendered to the use of his will*, and die seised of some copyholds surrendered, and some *not* surrendered,—those only which were surrendered shall pass. See 3 Atk. 8. *Gascoigne v. Barker*. 3 Ves. 191. *Wilson v. Mount*. But if a specific description be given of the premises, the words, “which I have surrendered,” &c. may be considered as a mistake, *ibid.* [So also where a testator devised all the residue of his estates as well copyhold as freehold, adding, “the copyhold part thereof having been previously surrendered to the use of my will,” and died without having surrendered *any* of his copyhold premises to the use of his will, it was held to be a mistaken description, the copyhold being clearly in-

So, by such general clause, they shall be made subject to debts : as if the will runs “ as to all my worldly estate, I desire all my just debts shall be paid.” For, by Lord Commissioner *Ashurst*, in the case of *Coombes v. Gibson* (y), “ the doctrine is that where the introductory words make the real estate liable, it shall extend as well to the copyhold as to the freehold lands. The freehold is as unnatural a fund for the payment of debts as the copyhold. It was admitted if there had been no freehold, the copyhold would have been liable. If the freehold had been devised to one person, and the copyhold to another, the freehold might have been first applied.” And it was decreed that by such general words both the freehold and copyhold were liable (z).

so they are made subject to debts by a general clause.

tended to pass, 3 *Ves.* 65. *Rumbold v. Rumbold*.] “ All my freehold and copyholds,” without saying, “ which I have surrendered,” &c.—All pass. See 3 *Ves.* 194. [A devise of all copyhold estates, in general terms, unrestrained, passes all copyholds surrendered and not surrendered to the use of the will. 10 *Ibid.* 589. *Blunt v. Clitherow*. And by stat. 55 *Geo.* 3. c. 192, a devise of copyholds is now made valid and effectual without a surrender to the use of the will.]

(y) 1 *Bro. Chan. Cas.* *274.

(z) And see also 3 *Bro. C. C.* 257. *Kentish v. Kentish*, and 3 *P. Wms.* 96. *Harris v. Ingledew*. [Personal estate

Surrender to
will supplied.

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But though a surrender is thus essential to the transfer of the tenant's interest in copyholds to a stranger, and the will merely a declaration of the uses of such surrender; yet, if a copyholder devise his tenements held by copy, without surrendering them to the use of his will, a court of equity will, under certain circumstances, effectuate such devise, by supplying the defect; and compel the heir to surrender the premises according to the testamentary disposition(*).

bequeathed subject to payment of debts, funeral expenses, and testamentary charges; but in case his personal estate "should not be sufficient to discharge the same," then testator charged all his freehold estate with payment thereof, and "subject thereto," gave all his freehold and copyhold estates which he had surrendered or intended to surrender to the use of his will, &c. The copyhold estates held to be charged, on the general principle that, in a doubtful case, the court inclines to the construction in favour of creditors rather than against them: not however inserting or straining words for that purpose. *a Ves. & Beames, 269. Noel v. Weston.*]

* [But now by stat. 55 Geo. 3. c. 192, application to a court of equity for its assistance in this respect, is rendered altogether unnecessary, the disposition of copyhold estates by will being thereby made effectual without a previous surrender to the uses thereof. *Vid. infra* vol. 2. Append. No. xviii. Notwithstanding, however, the

But equity will not interfere in a capricious or arbitrary manner. If the necessity or justice of the case does not demand it, the claimant must be left to his fate; and the heir is not to be disinherited where it would be consistent with justice that he should succeed (*a*).

In cases of moral obligation, as a provision for a wife (*b*) or child (*c*); or in favour of a creditor (*d*) or a purchaser for valuable consi-

alteration thus made in the law with regard to the disposal of copyhold estates by will, it has been deemed advisable not to expunge from this work any part of the doctrine relative to the interference of a court of equity in supplying a surrender on a devise, inasmuch as it may still occasionally be found useful in ascertaining upon what principles, and to what extent, relief will be afforded in equity in other cases of defective conveyance. See 17 *Ves.* 296].

(*a*) *Watkins*. No. lxx. to *Gillb. Ten.* 157. (*k*) p. 412.

(*b*) 2 *Ves.* 582. *Tudor v. Anson*. 1 *Ves.* 228. in *Goodwyn v. Goodwyn*. 1 *Atk.* 385. *Smith v. Baker*.

(*c*) *Tudor v. Anson*, and *Goodwyn v. Goodwyn*, and 3 *Bro. Ch. Ca.* 286. *Pike and White*.

(*d*) 1 *Ves.* 215. *Ithell v. Beane*. *Tudor v. Anson*, *ubi sup.* 1 *Bro. Ch. Ca.* 273. *Coombes v. Gibson*. 3 *Ibid.* 257. *Kentish v. Kentish*. 2 *Bro.* 325. *Bixby v. Eley*.

deration(*e*), the court will aid the defect, and decree the heir to surrender.

As to
children.

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As to children, the parent is under a natural and a moral obligation to provide for them. Though the general law, or the particular custom, may entitle the eldest or the youngest child to enjoy the copyhold land of the parent in exclusion of the others, in cases where the requisite means have not been taken to impede the descent, upon principles of political wisdom, yet such positive law or custom cannot rescind or annul the parental obligation. Each child has equally a claim to its parent's care. Whatever may be the rules of human institution, there is a prior and transcendent law which is written with the finger of the Almighty on the heart of man. The individual, therefore, who, impelled by the powerful voice of nature, demonstrates his desire to comply with her dictates and fulfil those obligations which Heaven has imposed, must peculiarly claim the aid of a court of equity, which by its benign interference may prevent such

(*e*) 2 *Chan. Rep.* 218. *Barker v. Hill.* 2 *Vern.* 165. and see 2 *Vern.* 564. *Taylor v. Wheeler*, and *Ibid.* 609. *Jennings v. Moore et al.*

devise from being frustrated by the rigid adherence to a positive law.

Each child having a natural claim on parental care, each must be equally entitled to such equitable aid. If the estate descend to the eldest son, a surrender shall be supplied for the benefit of the other children: if the estate devolve to the youngest, the eldest has an equal right to demand the surrender in such case as the younger had in the former(*f*). If the estate is to descend to all the sons, as in *gavelkind*, the surrender shall be supplied for the daughters, or in favour of one son, if such appears the intention of the parent, and the others would not be destitute (*g*).

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(*f*) In the case of *Cooper v. Cooper*, 2 *Vern.* 265, the court would *not* supply the surrender: but that was by reason of the circumstances of the case. Had those peculiar circumstances not existed, there is no intimation that the court would have denied it, and see 1 *P. Wms.* 444. *Drake v. Robinson*, and 2 *Vern.* 165. where Lord Commissioner *Hutchins* said, that “there ought not to be one sort of equity for an eldest, and another for a younger son.”

(*g*) 2 *Vern.* 163. *Bradley v. Bradley*. 6 *Vin. Abr. Copyh.* (*W. c.*) pl. 12. *Andrews v. Waller*. Remainder on an estate tail. *Ca. T. Talb.* 37. [Devise to a child

The child entitled to the estate at law, is equally entitled to a provision in equity. But if he be provided for at the time it is enough: it matters not by whom such provision be made, so he have it. If he have it from a stranger, it is sufficient to induce and to justify the parent in precluding him from a share in his own estates. If he have an equitable provision, it matters not though he have not the patrimony of a groat. Hence then it is true, that the heir must not be *unprovided for*; but it is not accurate to say that he must not be *disinherited* (*h*).

in general terms, *not mentioning copyhold estate*, by will, not executed so as to pass freeholds;—surrender not supplied. 2 *Ves. & Beames*, 337. *Sampson v. Sampson*. And *per* the VICE CHANCELLOR. This is not the case of supplying a surrender for creditors; and there is no instance of doing it for a wife or child, where copyhold estate was not expressly mentioned in the will. *Byas v. Byas*, 2 *Ves.* 164. and many other cases shew that this was always required in that case, and that no implication from words, however large and general, would do without the term “copyhold;” though a probable intention might appear to comprehend both freehold and copyhold; where, for instance, the latter constituted the bulk of the estate, the freehold being inconsiderable. *Ibid.*]

(*h*) 1 *Atk.* 388. *Hawkins v. Leigh et al.* 3 *Bro. Ch.*

But it is not the province of the court to prescribe the quantum of such provision, either with respect to such heir or to the other children. The parent is the only judge (*i*). The

Ca. 229. *Chapman v. Gibson. Ibid.* 286. *Pike v. White.* [See also 5 *Ves.* 557. *Hills v. Downton*, and 16 *Ibid.* 268. *Garn v. Garn.* And if the heir in his answer to a bill filed against him to compel a surrender, state merely that he inherits nothing unless he is entitled to the estate in question, and does not say whether he is or is not provided for in any other manner, the court will direct an inquiry whether or not he has a provision, and as to the nature and extent of it. 17 *Ves.* 294. *Rodgers v. Marshall.*] It is my opinion, however, that what the heir has acquired or is acquiring by his own industry, cannot be considered as a provision; for if otherwise, every child may be said to be provided for who is not a cripple or insane; or the idle only would be favoured. C. W. [Whether a surrender would be supplied in favour of a younger son against a grandson, heir at law, unprovided for, has never yet been regularly determined, but in *Rodgers v. Marshall*, 17 *Ves.* 294, the Master of the Rolls declared the inclination of his opinion to be that such surrender ought not to be supplied.]

(*i*) 1 *Salk.* 187. *Kettle v. Townshend.* 3 *Bro. Ch.* *Ca.* 230, 231. *Chapman v. Gibson.* 6 *Vin. Ab. Copyh.* (*W. c.*) pl. 12. *Andrew v. Waller.* *Cas. T. Talb.* 36. *Cooke v. Arnhem.* [See also 15 *Ves.* 394, where the distinction which, in supplying a surrender, a court of

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parent indeed, must not direct a mere illusive share, for that would, in fact, be no provision at all. But the parent is the best judge, not only of the merit, but of the wants of his children. Those will have stronger claims to his protection who are incapable of protecting themselves *.

Grandchild.

Whether a surrender shall be supplied for a grandchild, does not appear to be absolutely settled †.

equity draws between the case of children and that of creditors, is very fully explained.]

But where a child *has* an equitable provision, and the devise goes only to *increase* that provision, the court, it is said, will not aid : for by such provision the obligation is satisfied ; and as to the overplus he must be considered as a volunteer. See 3 *Bro. Cha. Ca.* 188. *Lindopp v. Eborall*. Yet see *Tudor v. Anson*. 2 *Ves.* 582.

* [And there are cases of supplying the want of surrender upon a deed as well as a will, for a younger child ; but upon the same principle as in the case of a will or the execution of a power ; that is, for and against the same persons. *Per* the MASTER OF THE ROLLS, in *Rodgers v. Marshall*, 17 *Ves.* 294].

† Difference whether the *father* be living or not. See *Elton v. Elton*, 3 *Atk.* 508. and 2 *Fonbl. on Equity*, 123. *Saund. on Uses*, 242, 3. 6 *Ves.* 548.

In the case of *Kettle v. Townsend* (*k*), Lord Somers declared that such surrender *should* be supplied: but his decree was reversed in the House of Lords. Yet, in the case of *Watts v. Bullas* (*l*), the Master of the Rolls expressed himself dissatisfied with the reversal; and said that if the case had occurred at that time (1702,) the surrender *would* have been supplied; and that he had, and would decree it so.

Lord Harcourt also, in the case of *Free-stone v. Rant* (*m*), thought that a surrender *should* be supplied in favour of a grandchild; as did Lord Chancellor Cowper, in that of *Fursaker v. Robinson* (*n*); who both disapproved of the case of *Kettle v. Townsend* as determined in the Lords (*). In *Chapman v.*

(*k*) 1 *Salk.* 187.

(*l*) 1 *P. Wms.* 61.

(*m*) 1 *P. Wms.* 61. note.

(*n*) *Ibid.* and *Preced. in Chanc.* 477.

(*) And see 5 *Ves.* 557. *Hills v. Downton*, also *ibid.* 565. where Lord Loughborough disapproved of the case of *Kettle & Townsend*. [In *Perry v. Whitehead*, however, (6 *Ves.* 544.) the court declared itself to be bound by the case of *Kettle & Townsend*, and refused to supply a surrender in favour of a grandchild. And per the LORD CHANCELLOR,—A rule of law laid down

[137] *Gibson* (o) the Master of the Rolls appears to have been of the same opinion (i. e. that the surrender *ought to be* supplied ;) but said that “ it would be for the court to determine when the case should come before it,” and, consequently, he did not consider the doctrine as settled by the case of *Kettle & Townsend*.

Lord *Hardwicke*, indeed, in the case of *Elton v. Elton* (p), said that the court would *not* supply such surrender ; and recognized the case of *Kettle and Townsend* in the Lords*. And he seemingly alluded to it in that of

by the House of Lords cannot be reversed by the Chancellor ; though if there is any difference from a circumstance that was not before the House of Lords, the cause may be decided upon that.—The rule of law must remain till altered by the House of Lords.]

(o) 3 *Bro. Chanc. Ca.* 231. See also 3 *Ves.* 12, where the Master said, “ a grandchild is always in the same case as a child.”

(p) 3 *Atk.* 508.

* See also 3 *Atk.* 189. (in *Goring and Nash*,) where Lord *Hardwicke* said, that “ the reasoning of Lord Keeper *Wright*, in *Watts and Bullas*, was too large, owing to his pursuing the maxims of law too far as to the consideration of blood to raise an use ; for that would

Goodwin v. Goodwin (q) ; and it was before recognized in the case of *Strode v. Lord Falkland* and others (r).

In the case of *Allen v. Poulton* (s) Sir *William Fortescue*, then Master of the Rolls, supplied such surrender against the eldest son of the testator : though perhaps that was on the principle that a person claiming under a will (which the eldest son did) must admit the whole.

Upon the whole, therefore, we have the opinions of Sir *John Trevor*, Lords *Somers*, *Harcourt*, and *Cowper*, and Sir *R. P. Arden* against the determination of the Lords in the case of *Kettle and Townsend*, with very powerful reasons in their support : whereas Lord

carry it to the remotest blood that could raise an use at law, which equity does not regard." The court, therefore, draws the line and stops at children. But why should it take the raising an use as a rule at all ? Why not confine the rule to descendants, *ad infinitum*, as in the statute of distribution ?

(q) 1 *Ves.* 228. and see 2 *Ves.* 582. *Tudor v. Anson*.

(r) 2 *Vern.* 625.

(s) 1 *Ves.* 121.

[138] *Hardwicke* seemed to have considered the doctrine as settled by that case *, and, therefore, went but little into its principle. The case of *Allen* and *Poulton* also, so far as it goes, is against it.

Natural child. In the case of *Fursaker v. Robinson* (*t*), the Master of the Rolls refused to supply a surrender on behalf of a natural child: and the doctrine was recognized by Lord *Hardwicke* in that of *Tudor v. Anson* (*u*).

Wife. A surrender shall always be supplied for a wife †, where an equal moral obligation would not be violated in giving her relief (*w*). A surrender, therefore, shall be decreed against a nephew or niece (*x*), but as a person is under

* [As did Lord *Eldon* also, in the case of *Perry v. Whitehead*. See *ante*, p. [136] note (*).]

(*t*) *Preced. in Chanc.* 475.

(*u*) 2 *Ves.* 582. [As also by the Master of the Rolls in *Cricket v. Dolby*, 3 *Ves.* 10].

† Though the devise be to her in fee. 1 *Atk.* 385. *Smith v. Baker*, and see *ante*, p. [133].

(*w*) 3 *Bro. Cha. Ca.* 232.

(*x*) *Ibid.* 229. *Chapman v. Gibson*, and see 1 *Atk.* 385. *Taylor v. Taylor*. [Also against a sister, whether

an equal moral obligation to provide for his children, they shall not be permitted to go destitute in order to support a bequest to her (*y*); but she may share the property with them (*z*).

But it is not necessary, in order to have a surrender supplied in her favour, that she be entirely unprovided for: the husband is the judge of the sufficiency of her provision (*a*).

provided for or not, 16 *Ves.* 90. *Fielding v. Winwood*]

(*y*) See *Ibid.* and 1 *Atk.* 568. in the case of *Hervey v. Hervey*.

(*z*) See 2 *Ves.* 582. *Tudor v. Anson* [Surrender supplied in favour of a widow, against coheirs, daughters of the devisor, who were married, and infant grand daughters by deceased daughters. 5 *Ves.* 557. *Hills v. Downton*; and there laid down, that, in supplying a surrender, the court ought to look only to the object, not the circumstances of the parties; as whether the heir be provided for or not.]

(*a*) 1 *Atk.* 568. 2 *Ves.* 582. *Tudor v. Anson*. [Later decisions have determined it to be immaterial how ample or how scanty her provision may be. See 16 *Ves.* 92. If the devise to her, however, be merely in general terms, without expressly mentioning copyholds, a surrender will not be supplied. See 2 *Ves. & Beames*, 337. and *supr.* [135] note (*g*).]

Brother and
sister.

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But the same moral obligation not extending to collaterals, the court will not supply the surrender to effectuate a devise from a brother to a sister (*b*); *a fortiori*, if the brother and sister be of the half blood to each other (*c*).

Nephew or
cousin.

Volunteers.

So, it shall not be supplied in favour of a nephew (*d*), or cousin (*e*); and of consequence, not for a meer volunteer; as a legatee (*f*) or devisee (*g*) who is not related in blood.

Creditors.

As to creditors, we have seen that, on a general devise for payment of debts, copyholds, *if surrendered to the use of a will*, will pass though there are freeholds (*h*).

(*b*) 1 *Ves.* 228. *Goodwyn v. Goodwyn.* 2 *Atk.* 304. *Trodd v. Downs.*

(*c*) See 3 *Atk.* 189. in the case of *Goring v. Nash.*

(*d*) 2 *Vern.* 621 & 625. *Sir L. Strode v. Dom. Russell and Falkland.* 3 *Chan. Rep.* 169. S. C. 3 *Bro. Cha. Ca.* 170. *Marston v. Gowan.* [And see 13 *Ves.* 168. *Judd v. Pratt*, and 15 *ibid.* 390].

(*e*) 2 *Ves.* 582. *Tudor v. Anson.*

(*f*) *Abr. Ca. Eq.* 122-4.

(*g*) 1 *P. Wms.* 354. *Vane v. Fletcher.*

(*h*) *Ante*, p. [132].

But if the copyholds are *not surrendered*, the court will not supply a surrender on a general devise for payment of debts, if the freeholds will suffice to pay them (i).

(i) *Ca. Temp. Talb.* 78. *Malabar v. Malabar*; and 3 *Bro. Cha. Ca.* 188. *Lindopp v. Eborall*. And see 3 *Ves.* 191. *Wilson v. Mount*. See also *Supplem. to Viner*, 315. *Copyh. (M. a.)* pl. 6. *Hellier v. Tarrant*. [A devise by general words, viz. "Messuages, lands, timentia, and hereditaments," for payment of debts, will include copyholds, *if required*; and the want of a surrender will be supplied. 12 *Ves.* 157. *Kidney v. Cousmaker*. And the court will not only supply the want of a surrender, but direct an account of rents and profits; and laches is not to be imputed to creditors under a devise for payment of debts as to an individual devisee, to prevent or limit such account, even against an infant heir; *ibid.* 158-9. And see 15 *Ves.* 394. where the distinction which, in supplying a surrender, the court observes between the case of a child and that of creditors, is very fully explained. In the case of creditors also, the court would hold that there might be a surrender to the use of the will, though no instance could be found upon the records of the manor; or if there could be no such custom, there must be some mode of disposition by deed, as in the case of customary freeholds, the want of which the court would supply. *Per the LORD CHANCELLOR*, in *Church v. Mundy*, 15 *Ves.* 396].

But where a person, having both freehold and copyhold property, *expressly directed* that his *copyholds* should be sold for payment of debts, and then devised his freeholds to his wife and daughter, a surrender was *supplied* : but in that case the daughter was also the customary heir (*k*).

[140] So, if a copyhold be specifically devised to one person, and a freehold to another, it should seem that the freehold should be first applied (*l*). For the point here is, whether a surrender shall be supplied in favour of the *creditors*, and not whether the surrender shall be supplied in favour of the *devisee*. In this case neither the freehold nor copyhold, is specifically or even generally charged : and copyholds are not assets at law (*m*). But freeholds are not only

(*k*) 2 Bro. Cha. Ca. 325. *Bixby v. Eley*. With regard to a charity, see *Ambl.* 571. *Attorney General v. Lady Downing et al.* But *q^r*. and it is there said that the surrender must be supplied *in toto* if at all. But see *post*. [140-2] 1 *Ves.* 225. And note, the will in *Ves.* was *before the stat. of Mortmain*.

(*l*) See 1 Bro. Ch. Ca. *274. *Coombes v. Gibson.* and 2 *Ibid.* 325. *Bixby v. Eley*.

(*m*) 4 Co. 22. a. Nor in equity. 1 *P. Wms.* 680. Note. *Robinson v. Tonge*. A copyhold cannot be

assets in the hands of the heir, but now also, by statute, are subject to debts in those of the devisee (n). The creditors, therefore, who have specialties, may avail themselves of the freeholds; and if, from such freeholds, they are fully paid, they will cease to be creditors; and the question will be at an end. In cases, indeed, where the creditors are only by simple contract, and so cannot resort to the freeholds, either from the assets not

affected, even by a judgment at law, (*Park. 190. Rex v. Bud. and see 6 Vin. 222. pl. 6.*) much less by a covenant that would not bind the heir at law of the copyhold. *Precedents in Chancery, 477. Fursaker v. Robinson.* [Copyhold estates are not liable to debts further than subjected, *8 Ves. 393.* They are not assets for specialty debts, nor even debts to the crown, *ibid. 394.* But a lease for one year of copyhold lands, which is warranted by the common law, shall be assets in the hands of an executor. *1 Ventr. 163.* A lease for years, however, made by a copyholder with license, it is said, shall not be accounted so, inasmuch as it is but a customary estate. *Gilb. Ten. 295.* Though the profits when received may be assets, for then they are chattels, and partake no more of the nature of customary lands; and therefore it seems reasonable that they should be assets in the hands of the executor. *Sed quære, ibid. 296*].

(n) Stat. 3 & 4 Will. & Ma. c. 14.

being equitable assets, or from there being no personals, exhausted by the specialty creditors, to enable them to take their places, a surrender must be supplied on the principles of common justice and equity.

Surrender
supplied for
a limited
interest.

[141]

If a copyhold be devised to a person for whom the testator was obligated to provide, as a wife for instance, with remainder over to a person to whom such obligation would not extend, as to a nephew or niece, the court will aid the particular devise but not the remainder over. The limited interest shall be supported ; but the residue shall result to the customary heir (o).

So, if a devise be for payment of debts *, and subject to such payment, to strangers ; it seems to follow, on the same principle, that the heir shall not be compelled to surrender or make a title to more than is sufficient to satisfy the debts : for the heir has equal equity at least with the devisee ; and

(o) 3 Bro. Ch. Ca. 170. Marston & Gowan.

* Quoad Debts, *vid. ante*, p. [139].

where the equity is equal, the law must prevail (*p*).

But if the devise be to persons within such obligation, a surrender shall be supplied, though the estate for which it is supplied be in remainder. So as to remainders to sons, &c.

As if a copyholder devise to his grandson for life, with remainder to his first and other sons, remainder to his daughters in tail, with remainder to his younger son in fee; and the grandson die without issue; a surrender shall be supplied in favour of the younger son against the devisee of the grandson; though the grandson was the heir of the testator and had surrendered to will (*q*).

So, if a father, seised of copyhold lands, limit them to a first son in tail, and a second son, and a third, fourth, and fifth son; and there be no surrender; and the second son [142]

(*p*) See 2 Bro. Ch. Ca. *388. in *Compton & Collinson*.

(*q*) Ca. Temp. Talb. 35. *Cook v. Arnham*.

bring a bill, who is to take in possession, to have it supplied; the court will decree it for the third, fourth, and fifth sons, as well as the second; considering it as intended for a provision; and in the same order as the father had left it (*r*).

So, if the estate of the testator himself had been only in remainder; as if he had devised a remainder on an estate for life; the surrender would have been equally supplied (*s*).

Heir put to
his election.

But though a surrender of copyholds shall not be supplied against the heir in favour of volunteers, yet, as the testator has a power to devise his freeholds to whom he pleases, if he devise his freeholds to his heir and his

(*r*) See 3 *Atk.* 191-2. in *Goring v. Nash*.

(*s*) See *Ca. Temp. Talb.* 37. in *Cook v. Arnham*. Previous limitations, then to a charity,—not supplied. But said that a surrender *might* be supplied in favour of a charity. See *Ambler*, 573. *Attorney-General v. Downing & al.* and *quære*, (see 1 *Ves. Jun.* 495. *Barnes v. Crowe*.) as to this case on another point.

copyholds to a stranger, the heir shall, in many cases, be put to his election.

Thus where a testator having several copyholds, part of which he had surrendered to the use of his will and part had left unsurrendered, devised to his heir and the heirs of his body; and in his will recited that as to some part of his copyholds, he was not enabled to devise them by reason of their not being surrendered, and that therefore, such part would descend to his heir, and, in consequence, directed his heir to surrender to the trusts he had created; and on his refusal so to do, ordained that the estate limited to him and the heirs of his body should cease, and the remainders take effect in possession; the heir was decreed to surrender the premises (†).

[143]

So, where a testatrix, being seised of freehold estates, and some copyhold lands lying dispersedly, and having surrendered her copyhold estates to the use of her will, by her will devised all her real estates, as well free-

(†) 3 Bro. Chanc. Ca. 116. *Wardell v. Wardell*.

hold as copyhold ; and gave Lady Standish, who was one of her co-heirs at law, 1,000 *l.* and after the making of her will, exchanged those copyhold lands for others ; which were surrendered to her ; but did not surrender those to the use of her will ; Lady Standish was put to her election, and, on her having elected to take the 1,000 *l.* the court declared that she and the other co-heirs should surrender the copyholds to the uses of the will (*u*).

(*u*) 1 *Bro. Ch. Ca.* 588. *Frank v. Standish*, in *Scacc.* in Not. [See also *S. C.* 15 *Ves.* 391.] And see further as to election, 1 *Ves.* 234. *Cookes v. Hellicr*, and *Ambler*, 430. *Unett v. Wilkes*. 1 *Bro. Ch. Ca.* 480. *Macnamara v. Jones*, (end of the case,) 3 *Ves.* 65. *Rumbold v. Rumbold*, and the cases there cited. *Ibid.* 191. *Wilson & Mount*. 7 *ibid.* 541. *Pettyward v. Prescott*. Exceptions,—see 2 *Ves.* 33. and 2 *Ves. Jun.* 371. [The point that the doctrine of election reaches the customary heir claiming a copyhold estate for want of a surrender,—admitted at the bar. 10 *Ves.* 589. *Blunt v. Clitherow*, and see 15 *ibid.* 393. But a devise in general terms, viz. “ All the rest, residue, and remainder of my real and personal estate, of what nature,” &c. soever, for the benefit of nephews and nieces (not for creditors, wife, or children,) is not sufficient to raise a case of election,

Again, where the testator had done all in his power to comply with the requisite forms, but was prevented by the acts or refusal of others, the court has, in many cases, decreed a surrender.

As where a person entitled to an equitable estate tail in a copyhold, endeavoured to get in the legal estate, to the intent he might have made a regular and proper surrender; but the trustees refusing to comply, he brought a bill to enforce them; and repaired to the Lord's court, and made, or [144] tendered to make, such surrender as he could: it was held sufficient to bar the entail of the trust, and that the devise was good (x).

So, in the case of *Vane v. Fletcher* (x), the Lord Chancellor said that if the heir had done any thing himself to prevent the ac-

or for supplying the want of a surrender of copyhold land, (although contiguous to, and intermixed with the freehold,) against the heir. 13 *Ibid.* 168. *Judd v. Pratt.*]

(w) See 2 *Vern.* 583. *Otway v. Hudson & al.*

(x) 1 *P. Wms.* 354-5.

ceptance of a surrender it would have been material. And we are told by the reporter, that it did not appear, after all, that the *testator had done* all in his power, for the making of the surrender; *for which reason* the title to the copyhold premises was declared by the court to be in the heir.

So, where a copyholder cannot surrender by reason of the alienation of the freehold of the premises, the court will effectuate his disposition (*y*).

Surrender
presumed by
reason of pos-
session.

If possession has been long peaceably held, (as for forty years, for instance,) and especially if the rolls are lost, a surrender shall be presumed. A surrender to a will being frequently made out of court, it may often be lost or forgotten by the steward, and so not inserted on the rolls, without any default of the copyholder (*z*).

Against whom
a surrender
shall be sup-
plied.

We have already seen that a surrender

(*y*) 4 Co. 25. a. *Murrell and Smith*.

(*z*) 1 Vern. 195. *Lyford v. Coward*. 2 Cas. in Chanc. 150. S. C. 2 Frcem. 106. *Knight v. Adamson*.

shall not be supplied in favour of a volunteer against a child, who would, in consequence, be left unprovided for.

But a surrender shall be supplied in favour of a wife, against a distant heir ; as a nephew or niece (*a*). [145] Nephew, &c.

So it shall be supplied against a devisee. see (*b*).

So, against a purchaser *with* notice (*c*) : but not against a purchaser *without* (*d*) ; for he has an equal equity : and where the equity is equal, he who has the legal estate must prevail. Purchaser with notice.

So it shall be supplied against the assignees of a bankrupt (*e*). Assignees of a bankrupt.

(*a*) 3 Bro. Ch. Ca. 229. *Chapman v. Gibson*. See also 5 Ves. 557. *Hills v. Downton*. [And *supr.* p. [138].]

(*b*) Ca. Temp. Talbot, 35. *Cook v. Arnham*.

(*c*) 2 Vern. 609. *Jennings v. Moore*.

(*d*) *Ibid.*

(*e*) 2 Vern. 564. *Taylor v. Wheeler*. And 2 Ves. 633. in *Hinton v. Hinton*.

Tenant for
life.

So where a copyhold is granted for lives, and the first taker has power to dispose of it, a surrender shall be supplied against the person next in succession, equally as against the heir in the cases of inheritance (*f*).

Heir.

But as copyholds are equally liable to agreements as freeholds are, if the copyholder enter into an agreement* for a valuable† consideration, his heir shall be decreed to surrender (*g*): though he be heir in borough English (*h*), or several be heir in gavelkind (*i*).

Widow.

So against the widow claiming her free-bench (*k*).

(*f*) 1 *Chanc. Rep.* 274. *Greenwood v. Hare*.

* Though by parol, *Dunb.* 94. *Borrett v. Gomeserra*, and *Eq. Abr.* 46. *pl.* 13.

† On marriage. See 2 *P. Wms.* 624.

(*g*) 2 *Ves.* 633. *Hinton v. Hinton*. See also *Ca. T. Finch*, 272. *Pattison v. Thompson*: and *ib.* 331. *Keen v. Sparrow & al.* as to mortgages, and *post.* [213].

(*h*) 2 *Ves.* 639.

(*i*) *Ante*, p. [134].

(*k*) *Hinton v. Hinton*, 2 *Ves.* 631. 638. *Amb.* 277. S. C. [If a copyholder have power to bar the widow's free-bench by surrender, any act by him for valuable consideration will bar her in equity. 3 *Ves.* 256.]

But it shall not be decreed against an heir [146]
 in tail, where the ancestor enters into con- Issue in tail.
 tract and dies without barring the entail;
 whether such entail be with, or without, a
 remainder over (*l*).

If a person wrongfully admitted to a copy- A person hav-
 hold surrender it to the use of a purchaser, ing no interest
 and, after such surrender, become entitled to at the time of
 the premises by right, the court will compel contract.
 him to convey his interest accordingly, though
 it should seem, it will not decree his heir to
 surrender in case he die; it being considered
 as a personal equity, attaching on the con-
 science of the party, but not descending with
 the land (*m*).

Brown v. Raindle.] So if a wife agrees with her
 husband to surrender the wife's lands, she shall be
 decreed to perform if the husband die. 2 *Vern.* 61.
Baker v. Child. But see *Comyn's Dig. Chanc.* (2 M. 6.)
 v. 2. p. 112. [386. 8vo. ed.]

(*l*) 2 *Ves.* 634. Of joint-tenant, see 2 *Vern.* 63. in
Mugrave v. Dashwood.—A severance in equity, see
 3 *Ves.* 257. *Brown v. Raindle.* 2 *Ves.* 634. *Per*
Hardwicke, in *Hinton v. Hinton.*

(*m*) See 1 *Anstruther*, 11. *Morse v. Faulkner & al.*

CHAP. IV.

OF ENTAILS.

[147]
History of
entails.

FEW subjects, perhaps, have been disgraced with a greater share of inconsistency and learned absurdity and confusion than that on which we are now to remark. But as error, however sanctified, must continue to be error, and as absurdity, however revered, must continue to be absurdity, it becomes us with manly dignity to oppose their influence ; and instead of pusillanimously submitting to arbitrary assertion, endeavour to rescue the subject before us from the consecrated nonsense which it has been doomed to sustain.

We find it repeatedly declared that estates tail were unknown till the statute *de donis* ;

which statute was enacted in the thirteenth year of King *Edward* the first (n).

Before that statute, say they, all estates of inheritance were either in fee-simple absolute or conditional.

But let us not be satisfied with assertion; let us inquire into the truth or error of the doctrine before we subscribe to this [148] legal creed.

We find from historical facts, that feuds were given for life before they were given to a person and the heirs of his body; they were given to a person and the heirs of his body, before they were given to a person and his heirs, general, or indefinite. The *descendants* of the feudatory were admitted before his *collateral* relations. An estate tail, therefore, must necessarily (in reality, though not in terms) have preceded an estate in fee-simple: for what was the *feudum novum* but an estate tail in effect? *Somner* says (o), that *beneficium*

Feuds granted to a person and the heirs of his body.

Feudum novum.

(n) A. D. 1285.

(o) *On Gavelk.* 102.

[150]

Progress of
alienation.

Crusades.

The policy however of free alienation for the purposes of commerce, became every day more apparent. But it was not for the purposes of commerce only that free alienation became requisite. An event of a most extraordinary nature was about to take place, which accelerated the free alienation of property. The crusades were to desolate Europe.

Conditional
fees.

Now were seigniories and tenements to be converted into specie. Now were plough-shares to be turned into swords, and pruning hooks into spears, for the holy purposes of human destruction. The baron must equip himself for his pious expedition : he required money ; and he sold his lands. The contagion was extensive ; and the tenant was also to fight the battles of the lord. The baron, anxious to increase his followers, willingly permitted his tenants to alien ; and cared but little for the rights of reverter which were attached to seigniories

mainder thereof to the lord and his heirs for ever ; with license of the lord of the manor in that behalf obtained."

Here then is an existing instance of the doctrine of conditional fees being withstood.

he was about to dispose of, or, which being [151] temporal, he affected to despise (s).

But, even though the right of reverter was deemed of more importance by those barons who remained at home, the probability of the particular tenements actually reverting was removed to a greater distance, by the tenant's having issue born (*t*). This circumstance, added to the causes we have mentioned, operated to countenance the doctrine about to be established, which was to enable the tenant on such an event to alien in fee.

But when the lords returned to the baronies they had left, and were again seated in the seats of their ancestors, they thought very differently from what they did when preparing for their expeditions against those whom they denominated the enemies of the Cross of Christ. They then encouraged their tenants to alien that they might accompany them to the Holy land. They regarded but

Power of alienation restrained with respect to estates tail.

(s) *Watk.* No. lxxix. to *Gilb. Ten.* 422.

(t) See 2 *Bl. Comm.* 110, &c. ch. 7.

little the reversion of tenements, which, if it should actually occur, they conceived they should never enjoy. But these reasons had ceased: and they now considered that as a wrong which before they regarded as expedient.

[152]

Stat. *de donis*.

About the close of the thirteenth century, the Christians were expelled from Palestine. *Edward*, who was afterwards *Edward* the first of *England*, returned from thence in the year 1272. In that of 1285, the celebrated statute *de donis* was enacted: and about 1291, we find Palestine abandoned by the Christians.

The statute *de donis* considered the alienation in fee, by a person who had the estate so aliened only to himself and the heirs of his body, as manifestly tortious and unjust, even though the tenant had issue: and, therefore, it was enacted, that thenceforth the will of the donor should be observed; and the tenant should have no power to alien so as to defeat either his issue or the lord.

By this act, the tenant was restricted

even from transferring the estate limited to him and his issue, except indeed as to his own life : he could not convey it to another and the issue of that other : he could not substitute another person as to the tenancy ; though the estate might possibly not be protracted.

The property was thus rendered inalienable, both with respect to the issue and the lord. Hence another great end was accomplished : that of preserving the wealth and power of the barons : and hence has this famous statute been sarcastically denominated “ THE STATUTE OF GREAT MEN *.”

The evil of rendering such estates inalienable, was found, however, to be intolerable among an improving and commercial people, and several means have since been prescribed for frustrating this provision of the statute *de donis*. [153]

Right of
alienation
restored.

* *Quia emptores* is said to have been made “ at the instance of the great men of the realm.” See it, cap. 1.

Of copyholds granted to a person and the heirs of his body.

Having thus cursorily traced the progress of conditional fees and estates tail (*u*), we will proceed to inquire into the nature of that estate which may be granted by copy to a person and the heirs of his body.

Now it is established that, if there be a custom in a manor to grant a copyhold to a person and his heirs general, or in fee-simple, there a grant of a copyhold to a person and the heirs of his body is good; without any special custom to warrant it. As a power to limit the largest estate which the law acknowledges, necessarily includes the power of creating a less (*w*).

But the question here is, Whether such estate, so limited to a person and the heirs of his body, be a fee-conditional, an estate-tail, or neither one nor the other?

Now it is argued that, as all estates of in-

(*u*) See *Watk.* No. lxxix. to *Gilb. Ten.* 418. where the subject is more fully treated on.

(*w*) *Cro. Eliz.* 373. *Stanton & Barnes*, and see 3 *Co.* 8. a. *Heydon's case.* 4 *Co.* 23. a. *Bullock & Dibley.* 4 *Leon.* 64. Ca. 157.

heritance were, prior to the statute *de donis*, either in fee-simple absolute or conditional, [154] (though by the bye, this is setting out with a tolerable share of assumption,) the estate thus limited to a person and the heirs of his body, being an estate of inheritance and not in fee-simple absolute, must of necessity have been a conditional fee at common law; and also must of consequence continue to be so if the statute does not extend to copyhold lands. The question therefore returns, Does that statute extend to copyholds or not?

It is urged on one hand, that custom, without the statute, cannot possibly create an entail: and it is urged on the other, that the statute, without custom, cannot possibly create one of copyholds: but we are told that, by the statute co-operating with the custom, an entail of copyholds may be created (*x*).

(*x*) See *Co. Litt.* 60. a. & b. 3 *Co.* 8. b. Custom that feoffment by tenant in tail shall not be a discontinuance. See 1 *Roll. Abr.* 562. Customs, (T.) pl. 2. If the custom was from time whereof, &c. (as every custom must be)

The question, therefore, now is, what shall be such a custom with which the statute may co-operate ?

Fee condi-
tional.

[155]

Now we find it expressly adjudged in several cases(*y*), that the statute shall not attach upon a mere limitation to a person and the heirs of his body; but that such limitation will give a fee conditional at common law; and that the tenant may alien in fee-simple immediately on issue had.

Reasons
against ap-
plying the
statute to
copyholds.

Many reasons are given why the statute should not extend to copyholds. The most important are these: 1st. That it would alter the tenancy; as the donee must hold of the donor and not of the lord. 2dly. That the estate would be inalienable; as no fine or recovery could destroy the entail: 3dly. That copyholders were at the time of making the statute *de donis* only tenants at will, and

the entail must have been so, and consequently before the stat. which from its nature must have been within time of memory.

(*y*) *Cro. Car.* 42. *Rowden & Malster, Godb.* 367. S. C. and the cases there cited.

their estates of too base a nature to be considered as within its provisions (z).

As to the first of these reasons we may observe, that the creation of tenure between the donee and donor is only by construction of law; and cannot be applied to copyholds. If a person having an estate of *freehold* in fee-simple grant to another for life, or since the statute *de donis*, give to another in tail, he only grants or gives a portion of his own estate; and is answerable for the whole seisin to the lord. But, if a *copyholder* in fee surrender to the use of another for life, the tenant for life shall hold of the lord, and not of him who surrendered to his use. Now, if the surrenderee for life shall not hold of the surrenderor in this case, why should the surrenderee in tail* be considered as holding of necessity of him? That the donee must hold of the donor, and not of the lord, does not appear to be any wise of necessity in order to create an estate tail.

Those reasons considered.

[156]

(z) See Rowden & Malster, *ubi sup.* and 3 Co. 7. a. Heydon's case, &c.

* See Cro. Car. 44.

As to the second reason, that if entails were allowed of copyholds it would be to create a perpetuity, as there would be no mean of destroying such entail : the answer is, that this is contrary to fact : and that there are several such means ; as we shall presently see.

As to the third reason, that a copyholder was only a tenant at will, we may reply that, though he be in strictness only a tenant at will, he has a fee-simple *secundum quid*.

Cases in which
the statute is
said to apply.

However, it is laid down in other books, that if a limitation of a copyhold to one person and the heirs of his body, with remainder over to another, has been customary in a manor ; or if, on a grant to one and the heirs of his body, the issue has avoided the alienation of his ancestor, or recovered in a *formedon* in descender, it will, with the co-operation of the statute, be a good entail (a).

157]

But, if a limitation to a person and the

(a) See *Co. Litt.* 60. b. 2 *Ves.* 601.

heirs of his body with remainder over to another, could have been *before* the statute, and this must necessarily be pre-supposed before we can conceive such statute to *co-operate* with custom, we may ask what was the nature of the particular estate? Was a remainder permitted on a conditional fee? If not, and such estate was, therefore, neither a fee-conditional nor an estate tail, what appellation can be assigned to it? And, consequently, as such estate was certainly an estate of inheritance, and yet, as certainly, not an estate in fee-simple absolute, if it was not a fee-conditional, how can it be true that *all* estates of inheritance were either in fee-simple absolute or conditional before the statute?

Those cases
examined.

If such limitation had been by custom, and the alienation of the ancestor *could* have been avoided by the issue, the estate seems to have been that very estate which the statute is supposed to have established; and so to be properly an estate tail (call it what you please) without its aid: since the direct end of the statute was to prevent alienation. And, consequently, such estate would have been *before* the statute.

[158] As to avoiding the alienation by a *formedon* in descender, it may suffice to remark, that the *formedon* must either have lain at the common law (*b*) or been given by the statute *de donis*; and, consequently, if such *formedon* was at the common law, it must have been *before* the statute; and if not, it was the effect of that very statute, and not of any thing with which that statute could co-operate.

Now, if a custom to grant a copyhold in fee-simple will warrant a grant to a person and the heirs of his body with remainder over (*c*), such limitation would have been good in all manors where a fee-simple might have been granted; as well before as since the statute. Since custom must have been immemorial; and, consequently, anteriorly to such statute. Now, if the statute will co-operate with such limitation so as to effect an estate tail, it seems to follow that entails may be effected in all manors where a grant in fee-simple is allowed.

(*b*) See *Plowd.* 225. & *Inst.* 286. *Co. Litt.* 6a. b.

(*c*) *Stanton v. Barnes*, ante, p. [47].

It should seem, therefore, from what has been said, that the estate which we now denominate an estate tail was known before the statute *de donis*: it being apparent from the very words of the statute, that no new estate was introduced by it (*d*). That an estate to a person and the heirs of his body, which such person had no power to alien, was not only compatible with the ancient feuds but indisputably common (*e*): That power was in after times given to the tenant to alien on issue born, for the purposes and reasons before noticed: That the statute took away such power of alienation, and restored the ancient law: That if, when copyholds became grantable to a person and the heirs of his body, the law permitted him to alien, and so brought him within the mischief of the act, there does not appear any good reason why he should not be within its remedy: That it is no answer to this to say, that, if copyholds were within this statute, they would become inalienable; for so were freeholds till fines and recoveries were permitted to be

Estates tail known before the statute.

[150]

(*d*) And see *Wright's Ten.* 189. & 1 *Wils.* 27.

(*e*) See *ante*, p. [148]. 2 *Bl. Com.* 110. ch. 7.

a bar : And as fines and recoveries are now bars to entails of freeholds, so recoveries and surrenders are now bars in the cases of copyholds.

Trust of a copyhold may be entailed.

[100]

Though the doctrine, therefore, when divested of all its very learned obscurity, appears thus simple and express, yet it may be conceived frequently prudent to avoid the opposition of prejudice, or of a rigid adherence to what is deemed law as consecrated by certain cases and precedents, (however numerous the cases and precedents which may be adduced to the contrary;) and, in order to effect this end, a *trust* may be created whenever the custom of the manor will warrant a grant in fee. For whenever such grants in fee are allowed, the copyholds, which may be so granted, may be entailed in effect: if not by custom at law, they may be so in equity without it. For the custom only binds the tenancy, and has nothing to do with the trust. If a surrender be made to a person and his heirs, and a trust be declared of such estate to another and the heirs of his body, a court of equity will see it observed. The trustee and his heirs are tenants to the lord; and the lord

has nothing further to do with it. The trust is between the tenant and the *cestuy que use*, and solely the subject of equity (*f*). The form of a deed, therefore, by which such a trust may be created, will be given at the end of this chapter.

Having thus considered the progress of fees conditional and estates tail, we will now inquire into the modes which have been adopted for the alienation or barring of such estates.

We have already observed that, according to the legal idea of a conditional fee, it

Alienation of conditional fees.

(*f*) *Watk.* No. lxxix. to *Gilb. Ten.* p. 426-7. It has been suggested to me, that equity cannot call in the legal estate, as the legal estate could not be transferred to one whom the custom does not notice. But qu. whether, if the legal estate could *not* be transferred to the issue in tail, the court of equity would not in such case leave it in the trustee, and make him hold subject to the equity. If no one can take the trust who could not take the legal estate, according to the above suggestion, yet it must be proved than an estate to *A.* and the heirs of his body, is not included in the power to grant or limit in fee-simple.

[161] became immediately alienable in fee-simple on issue born. It was this power of alienation which was expressly restrained by the statute *de donis*. Whenever, therefore, that statute was not considered as extending to such a limitation, the power of alienation continued. When such a limitation of copyholds is only regarded as conveying a conditional fee, the person to whom it is so limited, may, on issue had, convey it to another in fee-simple by a common surrender (*g*).

Modes of
docking
estates tail:

Whenever a limitation of copyhold property, made to a person and the heirs of his body, is regarded as creating an estate tail, such entail may be, by several means, destroyed: it having been long established, in direct defiance of the statute, that wherever an entail may be created, it may also be barred: for a perpetuity shall never in such case be allowed. And so imperious is this rule of law, that no act of the party shall be suffered to counteract it *.

(*g*) *Cro. Car.* 42. *Rowden & Malster*.

* See N. (1) to *Co. Litt.* 379. b.

The most general, the most solemn, and, Recovery.
according to Lord *Macclesfield* (*h*), the most proper way of barring the entail, is by recovery in the Lord's Court, on a plaint, analogous to a recovery in the superior courts. And it should seem, from several authorities, that such recovery may be suffered in all manors in which an estate tail may be created, as an inseparable concomitant, and without any special custom to warrant it (*i*) ; [162]

(*h*) 3 *P. Wms.* 10. in *Dunn v. Green*.

(*i*) As every customary court has power *ex necessitate* to determine *adverse* suits relative to the lands held by copy of the manor, it should seem to follow as a necessary consequence, that they may also proceed to judgment on a *fictitious one*, and consequently permit recoveries to be suffered. See *post.* vol. 2. p. 34. &c. 39, 42. & 4 *Co.* 23. a. 1 *Wils.* 27. And see *Moore*, 358, *Dell v. Higden.* 1 *Roll. Abr.* 506. *Copph.* (B) pl. 2. S. C. *Dub.* but cites *Morris's* case as so adjudged, *p. Cur.* and see *Gilb. Ten.* 176. as citing *Moore*, 753. pl. 1037. *Carter's Rep.* 9. 23. *p. Bridgman*, C. J. in *Taylor v. Shaw.* And see 2 *Ves.* 604. *Carr & Singer.*

And it should seem from *Carter*, 22, &c. (*Taylor v. Shaw*), that a custom to restrain a recovery would not be good. As a custom to bar by forfeiture *et non aliter*: the *non aliter* would be void. "If you allow a customary entail you must allow a customary recovery," said *Bridgman*, C. J.

though other modes may be also used in the manor (*k*).

Manner of
suffering it.

The form of suffering such recovery in the manor court is this :—

[168] Let us suppose *Robert Brompton* to be tenant in tail, and desirous of barring the entail by recovery ; in which recovery *Henry Wilson* is to be tenant to the plaint, *Timothy Walgrave* demandant, *Robert Brompton* to come in as vouchee, and to vouch over *Edmund Akehurst* the common vouchee of the court.

And note, a recovery suffered in a manor court can only be reversed by petition to the lord, in the nature of a writ of false judgment. 1 *Vern.* 367. *Ash v. Rogle*, and the Dean and Chapter of St. Paul's, and *Shower's Ca. in Parl.* 67. See it, and 2 *J. Blackst.* 946. *Smith & Ux. v. Dean and Chapter of St. Paul's*.

If a person seised in tail of a copyhold, suffer a recovery in the Lord's Court, the fee acquired by such recovery will descend as the entail would have descended ; i. e. if the recoveror had taken the entail *ex parte materna* the fee shall descend to his maternal heirs. 5 *Durnf. & East*, 104. *Crow v. Baldwere*. One plaint for several tenements. See 8 *Co.* 47 b.

(*k*) 2 *Strange*, 1197. *Everall v. Smalley*.

In the first place let the copyholds be surrendered to the use of *Henry Wilson*, to make him tenant to the plaint; and let *Henry Wilson* be admitted in the usual manner.

Then let the steward say;

“ You, *Timothy Walgrave*, being now in court in your own proper person, complain against *Henry Wilson* of a plea of land (to wit) one messuage, &c. held of this manor by copy of court roll, at the will of the lord; and thereupon you pray process to be awarded against him?

“ But you *Henry Wilson* voluntarily appear to answer to the said *Timothy Walgrave*?

“ And, thereupon, you, *Timothy Walgrave*, demand against the said *Henry Wilson* the tenements aforesaid with the appurtenances, as your right and inheritance? And say that you were seised of the same in your demesne as of fee and right, according to the custom of this manor, at the will of the lord; and into which the said *Henry*

Wilson has not entry but after the disseisin of one *Hugh Hunt*, &c.?

[164] “ Whereupon you, *Henry Wilson*, come and defend your right to the tenements aforesaid with the appurtenances; and vouch over to warranty *Robert Brompton*?

“ To which you, *Robert Brompton*, appear?

“ And thereupon you, *Timothy Walgrave*, make the like demand against the said *Robert Brompton* as against the said *Henry Wilson*; and say that you were seised of the tenements aforesaid with the appurtenances in your demesne as of fee and right, according to the custom of this manor, at the will of the lord; and into which the said *Robert Brompton* has not entry but after the disseisin of the said *Hugh Hunt*, &c.?

“ Whereupon you, *Robert Brompton*, come and defend the right of the said *Henry Wilson* to the tenements aforesaid, with the appurtenances; and further call to warranty *Edmund Akehurst*?

“ To which you, *Edmund Akehurst*, appear ?

“ And thereupon you, *Timothy Walgrave*, make the like demand against the said *Edmund Akehurst* as against the said *Robert Brompton* ; and say that you were seised of the tenements aforesaid with the appurtenances in your demesne as of fee and right, according to the custom of this manor, at the will of the lord ; and into which the said *Edmund Akehurst* has not entry, but after the disseisin of the said *Hugh Hunt*, &c. ?

[165]

“ Whereupon you, *Edmund Akehurst*, come and defend the right of the said *Henry Wilson* ; and say that the said *Hugh Hunt* did not disseise the said *Timothy Walgrave* of the tenements aforesaid, as the said *Timothy* does by his plaint above pretend and allege : and of this you put yourself upon this court, &c. ?

“ And thereupon you, *Timothy Walgrave*, crave leave of this court to imparl until four of the clock of the afternoon of this day ?

“ Therefore leave is granted to the said *Timothy*, and also unto the said *Edmund*, to the said hour.”

Here let *Timothy Walgrave* and *Edmund Akehurst* leave the court: and at four o'clock proceed: *Timothy Walgrave* being come into court, but *Edmund Akehurst* being absent,

Then let the steward say :

“ And now, after the imparlance to you by this court given, you, *Timothy Walgrave*, appear ?

[166] “ Therefore let proclamation be made that the said *Edmund Akehurst* appear also.”

BEADLE, “ *Oyez, &c. Edmund Akehurst* come into court. and answer to *Timothy Walgrave* of a plea of land now pending between you; or judgment shall be entered against you for the tenements which he claims.”

STEWARD, “ *Edmund Akehurst*, although solemnly called, having made default and

standing in contempt of this court, let judgment be therefore entered against him that the demandant recover the tenements claimed.”

Make three proclamations before judgment, thus :

BEADLE, “ *Oyez, &c.* If any can aught say why *Timothy Walgrave* should not recover against *Henry Wilson, Robert Brompton*, and *Edmund Akehurst*, the tenements which he claims, let them come into court and they shall be received.”

STEWARD, “ But as none appears—it is considered by this court that the said *Timothy Walgrave* recover his seisin of the tenements aforesaid with the appurtenances against the said *Henry Wilson* ; and that the said *Henry Wilson* have of the lands and tenements of the said *Robert Brompton* within the jurisdiction of this court (1), to the value of the tenements aforesaid.

[167]

(1) The recovery in value can be only for other copyhold lands within the same manor. See *Moore*, 358–9. *Dell & Higden*.

“ And that the said *Robert Brompton* have of the lands and tenements of the said *Edmund Akehurst*, within the jurisdiction of this court, to the value of the tenements aforesaid : and that the said *Edmund Akehurst* be in mercy.

“ And in pursuance of this judgment, you *Timothy Walgrave*, pray the precept of this court to be directed to *Ishmael Cooke*, the bailiff or beadle of this manor, whereby you may be put into the peaceable possession of the tenements aforesaid with the appurtenances ; according to the custom of the same manor ?

“ Wherefore let such precept issue ; returnable here into this court without delay.”

BEADLE afterwards appears. STEWARD ;
“ You, *Ishmael Cooke*, the beadle of this manor of *Fairhurst*, appear, and say that you have delivered the full and peaceable possession of the tenements aforesaid to the said *Timothy Walgrave*, as by the precept of this court to you directed was commanded ?”

Then admit *Timothy Walgrave*; thus,

[168]

“ And in confirmation and execution of the same recovery, the lord of this manor, by me his steward, now in full and open court, grants seisin of all and singular the tenements aforesaid with the appurtenances, by this rod, according to the custom of this manor, unto you, *Timothy Walgrave*; to hold to you the said *Timothy Walgrave* and your heirs and assigns at the will of the lord according to the custom, &c. by the rents, duties and services, &c.”

Then let *Timothy Walgrave*, *Henry Wilson*, *Robert Brompton*, and *Edmund Akehurst*, surrender the tenements to the use of *Robert Brompton*, in the usual form: and let *Robert Brompton* be admitted.

The recovery, when suffered, is thus entered on the roll:

“ AT THIS COURT came *Robert Brompton*, one of the copyhold or customary tenants of this manor, in his proper person, and surrendered into the hands of the lord of the manor aforesaid, by the rod, and ac-

Entry on
the roll.

[169]

ceptance of his said steward, according to the custom of the said manor, *All* that copyhold or customary messuage, &c. *To the use* and behoof of *Henry Wilson*, of, &c. his heirs and assigns for ever: *To whom* the lord of the said manor, by his said steward, granted seisin thereof, by the rod; *To have and to hold* the said messuage, &c. unto him the said *Henry Wilson* his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; by the rents, duties, and services therefore due and of right accustomed. *And* he was admitted tenant thereof in form aforesaid; but paid no fine to the lord, because his estate was only had for a further assurance; and his fealty was pardoned.

“ *And afterwards*, at this same court, came *Timothy Walgrave* in his proper person and complained against the said *Henry Wilson* in a plea of land, that is to say, of the said messuage, &c. and made protestation to prosecute his said plaint in this court, in the form and nature of a writ of right patent at the common law, according to the custom of the said manor; and thereupon found pledges to prosecute the same in form aforesaid; that is to say, *John Doe* and *Richard*

Roe; and prayed that process might be thereupon awarded, according to the custom of the said manor, against the said *Henry*, returnable here, at this court, without delay. But the said *Henry Wilson*, being present here in court, voluntarily offered himself to answer unto the said *Timothy Walgrave*, without such process unto him directed: whereupon, the said *Timothy* demanded against the said *Henry*, the said messuage, &c. within this manor and the jurisdiction of this court, and held of this manor, by copy of court roll at the will of the lord, according to the custom of this manor, as his own right and inheritance; and whereof he was seised in his demesne as of fee and right at the will of the lord, according to the custom of the said manor, in the time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and that his right was such, he offered, &c. And thereupon the said *Henry* came and denied the right of the said *Timothy*, when, &c. and his seisin; of which seisin, &c. the whole, &c. and whatsoever, &c. and especially of the said messuage, &c. with the appurtenances in his demesne as of fee and right, at

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the will of the lord according to the custom of the said manor; and vouched to warrant the premises with their appurtenances, the said *Robert Brompton*; who being likewise here present in court, also appeared freely without process unto him directed; *And* the said messuage, &c. with the appurtenances, unto him did warrant. Whereupon the said *Timothy* demanded against him the said *Robert*, tenant by his warranty aforesaid, the said messuage, &c. with the appurtenances, in form aforesaid; and whereof he said he was seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. And that his right was such he offered, &c. *And thereupon* the said *Robert*, tenant by his warranty aforesaid, came and denied the right of the said *Timothy*, when, &c. and his seisin: of which seisin, &c. the whole, &c. and whatsoever, &c. and especially of the said messuage, &c. and premises before mentioned with the appurtenances, in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor; and vouched

to warrant the premises with the appurtenances, *Edmund Akehurst*, who being likewise then present in court, also appeared freely, without process unto him directed; *And* the said messuage, &c. and premises before mentioned with the appurtenances, unto him did warrant. Whereupon the said *Timothy* demanded against him the said *Edmund*, tenant by his warranty aforesaid, the said messuage, &c. and premises before mentioned, with the appurtenances, in form aforesaid; and whereof he said he was seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and that his right was such he offered, &c. *And thereupon* the said *Edmund*, tenant by his warranty aforesaid, came and denied the right of the said *Timothy*, when, &c. and his seisin, &c. of which seisin, &c. the whole, &c. and whatsoever, &c. and especially of the said messuage, &c. and premises before mentioned, with the appurtenances in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor; and put himself upon

See *Dyer*,
111. b. pl. 47.
Stafford's case.

[172]

the homage of the said court in the place and stead of the great assize at the common law, and prayed a recognition thereupon to be had—Whether he had more right to have and to hold the said messuage, &c. and premises before mentioned, with the appurtenances, as tenant thereof by his warranty, so as he now holdeth the same, or the said *Timothy* to have and to hold the said messuage, &c. and premises before mentioned, with the appurtenances, so as he above hath demanded the same? *And thereupon* the said *Timothy* prayed license to imparl until four of the clock in the afternoon of the same day; and it was granted; and the same time was given to the said *Edmund*, there, &c. *And afterwards*, at the said hour of four in the afternoon of the same day, the said *Timothy* came again into court; but the said *Edmund* returned not there into court, although he was solemnly called: but departed in contempt of the court, and made default. Whereupon in full and open court public proclamation was made, that if any one laid claim to the premises before mentioned, he should come in before final judgment should be given; but none came; *therefore*, according to the custom of

the said manor, it was considered by the court that the said *Timothy* recover his seisin against the aforesaid *Henry* of the said messuage, &c. and premises before mentioned, with the appurtenances ; and that the said *Henry* have of the lands and tenements of the said *Robert*, within the jurisdiction, &c. to the value, &c. And that the said *Robert* have of the lands and tenements of the said *Edmund*, within the jurisdiction, &c. to the value, &c. And that the said *Edmund* be in mercy. *And there-*
upon the said *Timothy* prayed of the lord of the manor aforesaid, a precept to be directed to *Ishmael Cooke*, the bailiff or minister of the court aforesaid, to cause him, the said *Timothy*, to have full seisin of the premises with the appurtenances ; returnable then at the same court without delay ; and it was granted. *And afterwards*, at the same court, came the said *Ishmael*, the bailiff or minister of this court, and returned, that by virtue of the said precept to him directed, he, the same day, caused the said *Timothy* to have full seisin of the said messuage, &c. and premises before mentioned, with the appurtenances ; as by the said precept to him directed was commanded. *By virtue of*

[173]

which recovery, and seisin thereupon had; as aforesaid, the said *Timothy* entered into the said messuage, &c. and premises above mentioned, with the appurtenances; and was thereof seised in his demesne as of fee and right, at the will of the lord, according to the custom of the said manor: *And* being so seised, by virtue of the recovery and execution had and made in form aforesaid, the lord of the said manor out of his special favour, for the better approbation, ratification, and confirmation of all and singular the premises, then in full court, by his said steward did give and deliver unto the said *Timothy* of the said premises, with the appurtenances, full seisin by the rod; *To have and to hold* the said messuage, &c. and all and singular the premises, with their appurtenances, unto him the said *Timothy*, his heirs, and assigns for ever, at the will of the lord, according to the custom of the said manor; by the rents, duties, and services therefore due and of right accustomed; but he paid no fine to the lord; because this recovery was only had for further assurance; and his fealty was pardoned. And the said *Timothy* was admitted tenant thereof in form aforesaid accordingly.

“ *And afterwards, at the same court, came the said Timothy Walgrave, Henry Wilson, Robert Brompton, and Edmund Akehurst, in their proper persons, and surrendered into the hands of the lord of the said manor by the rod, and acceptance of the said steward, according to the custom of the said manor, the said messuage, &c. and all and singular the premises above mentioned with their appurtenances, so recovered as aforesaid, To the use and behoof of the said Robert Brompton his heirs and assigns for ever: To whom the lord of the said manor, by his said steward, did then and there grant seisin thereof by the rod: To have and to hold the said messuage, &c. and premises before mentioned, with their appurtenances, unto him the said Robert Brompton his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; by the rents, duties, and services thereof due and of right accustomed. And he was admitted tenant thereof in form aforesaid: but paid no fine to the lord; because this recovery was only had for further assurance; and he had aforetime made his fealty.*”

Secondly: An entail of a copyhold may [175]

Forfeiture
and re-grant.

be barred by forfeiture and re-grant. But this mode of barring an entail is only adopted in compliance with the established usage of the particular manor. If such usage be not prescribed, a recovery or surrender is had recourse to for effecting a bar. But a custom to bar an entail by forfeiture and re-grant has been adjudged good.

As such forfeiture and re-grant are regarded as merely the instrument or form enabling the tenant to destroy the entail, they are considered as wholly subservient to that end.

The tenant, therefore, usually makes a lease without license, and not warranted by the custom; or else surrenders to a purchaser who makes such lease; to the end that a forfeiture may be incurred, and the lands, on seizure, be re-granted by the lord, to the person whom the lessor shall name.

On such lease, the lord seizes the copyhold as a forfeiture; and immediately re-grants it to the person designated. For the whole procedure being a mere form for effecting a bar, the lord is only an instrument, and compellable to

re-grant to the person nominated, as in the case of a common surrender (*m*). The proceedings are thus entered :

“ AND ALSO at this court the homage aforesaid present that *A. B.*, one of the copyhold or customary tenants of this manor, did, on or about the ——— day of ——— now last past, being then seised of an estate tail of and in a certain messuage, &c. situate, &c. within and held of the manor aforesaid, at the will of the lord, according to the custom of the manor aforesaid, demise and lease the said messuage, &c. unto *C. D.* &c. for and during the term of seven years from thence ensuing, without having previously obtained the license of the lord to authorize him so to do, and contrary to the custom of this manor : *Whereupon* the said messuage, &c. became forfeited to the lord. *And they further present* that the said demise and lease, so made as aforesaid, were made by the said *A. B.* to the only end that

[176]
Entry on the
roll.

(*m*) 2 *Saund.* 442. *Grantham v. Copley et al.*

thereby such forfeiture might incur, and that the lord of this manor, on seizure for the same, might re-grant the said messuage, &c. To the use of the said *A. B.* and his heirs, (or of *C. D.*, &c.) *To the intent* that such estate tail might be utterly destroyed and docked, and the said *A. B.* and his heirs might become seised of an estate in fee-simple of and in the said messuage, &c. at the will of the lord, according to the custom of the said manor; as in such cases used and accustomed.

[177]

“ *And* the said *A. B.* being present in court in his proper person, prayed the precept of this court to be directed to the bailiff of this manor, returnable without delay, commanding the said bailiff to enter into and upon the said messuage, &c. and seize the same into the hands of the lord: and the precept was granted.

“ *And afterwards*, the same court being sitting, *Ishmael Cooke*, the bailiff of the manor aforesaid, said that, by virtue of the same precept to him directed, he had entered into and upon the said messuage, &c. and seized the same into the hands of the

lord ; as by the same precept he was commanded.

“ *Whereupon the said A. B. further prayed, that the lord of the said manor would re-grant the said messuage, &c. to him the said A. B. and his heirs for ever, by copy of court roll, at the will of the lord, according to the custom of the said manor : To which prayer of the said A. B. the lord of the manor aforesaid by his said steward consented, and did, by the same steward, grant seisin thereof by the rod : To hold the said messuage, &c. unto him the said A. B. and his heirs for ever, at the will of the lord, according, &c. by the rents, customs, &c. So that he the said A. B. and his heirs might become seised of a clear estate in fee-simple, at the will of the lord, &c. of and in the said messuage, &c. And that all estates tail before vested in the said A. B. might be utterly and absolutely barred and for ever extinguished ; according to the usage of the said manor : And the said A. B. was admitted tenant to all and singular the said premises in form aforesaid ; but he paid no fine to the lord ; the same being on a common assurance : and he had aforetime made his fealty.*”

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By surrender. A third method of barring an entail of copyholds is by surrender.

“ In the case of *Everall v. Smalley* (n), it was said, by the court, that a surrender was the cheapest and the most natural way to bar an estate tail : and it was adjudged in that case that a custom to bar by surrender might be concurrent with a custom to bar by recovery*.

And if there be no custom prescribing the mode of barring such entail, it may be

(n) 2 *Strange*, 1197. 1 *Wils.* 26. S. C. 2 *Just. Blackst.* 944. *Doe d. Wightwick v. Truby & al.* and see 2 *Burr.* 969. *Martin d. Weston v. Mowlin.*

* [A single instance of a surrender in fee, by tenant in special tail, of a copyhold estate, held to be evidence of a custom within the manor to bar entails by surrender; though the surrenderor had not been dead 20 years, and though one instance was proved of a recovery suffered by a tenant in tail to bar the entail. 2 *Maule & Selwyn*, 92. *Roe d. Bennett v. Jeffery.* Concurrent customs in a manor to bar entails of copyhold by recovery and by surrender held not to be inconsistent; and that slight evidence is sufficient to prove the latter, because it is adverse to the interest of those who make the evidence. 7 *Taunt.* 674. *Doe d. Dauncey v. Dauncey.*]

barred by surrender*, though such surrender be only to the use of a will (o).

Again, if a copyholder in tail accept a grant of the freehold of the premises held by copy, the copyhold, though entailed, will be extinguished (p). By grant of the freehold

So if a person be a tenant in tail of a trust of copyhold, and accept a surrender of the [179]
Of the legal estate.

(*) In the case of *Radford v. Wilson*, 3 *Atk.* 815. Lord Hardwicke said, "it has never been laid down that a common recovery is necessary to bar an estate tail of copyholds."

(o) 2 *Ves.* 596. *Moore v. Moore*, *Ibid.* 604. *Carr d. Dagwell v. Singer*. 2 *Vern.* 585. *Otway v. Hudson*. *Ibid.* 702. *White & al. v. Thornburgh & al.* And the remainders over will be barred. See 2 *Vern.* 583. *Otway v. Hudson*. So if a surrender will bar a legal it will bar an equitable entail. See 3 *Atk.* 815. *Radford v. Wilson*. A. tenant for life, remainder to B. in tail,—a surrender by B. in the life-time of A.—no bar. See 1 *Bro. C. C.* 586, in *Highway v. Banner*. (*Per Master of the Rolls.*) q.

(p) 3 *P. Wms.* 9. *Dunn v. Green*. 1 *Brown. Ch. Ca.* 515. *Wynne v. Cookes*. 2 *Ves. Jun.* 524. *Challoner v. Murhall*. 1 *Vern.* 293. 458. *Parker v. Turner*.

legal estate from the trustees, it will bar the entail and remainders over.

*Grayme
& Grayme.*

Thus, *John Grayme*, being seised of certain copyhold premises held of the manor of *Accrington* in the county of *Leicester*, surrendered them to the use of *Robert Elton* and *Jeffery Taylor* and their heirs to such uses as he should declare by will, and, on the same day, made his will and declared that the trustees should stand seised of the premises, to the use (among other uses) of *John Grayme*, son of *Oliver Grayme*, for life, with remainder to the heirs male of his body : with remainder to *Oliver Grayme*, the second son of the before named *Oliver*, for life, with remainder to the heirs male of his body, with several remainders over.

The trustees were admitted, *John Grayme*, the son of *Oliver*, became possessed as tenant in tail ; and died, leaving a son *John*, who also became possessed as tenant in tail, when the trustees surrendered the premises, to the use of the said *John*, the son, in fee ; who was of consequence admitted ; and afterwards died without heir male, but leaving three daughters.

The plaintiff claimed as heir male of *Oliver* the second son of the first-named *Oliver*, by reason of the failure of the issue male of *John*.

The defendants were the daughters of *John* [180] the son, and claimed under the surrender made by the trustees to the use of their father in fee.

And by Lord Chancellor *Apsley*,

“The acceptance of the surrender and the admittance under it, is evidence of an intent to acquire a fee; and therefore a bar to the entail in equity.”

And the bill was dismissed, but without costs (q).

But while the equitable entail and the legal estate are in several persons, such entail must be barred by some act of the

Entail of a trust must be docted.

(q) *Grayne v. Grayne & Elton*, in Canc. Bill filed 22d June, 1763. And see also 2 *Vern.* 583. *Otway v. Hudson et al.*

tenant: for though it be but an estate in equity, it will not be devisable unless the entail be barred (*r*).

Equitable
recovery.

[181]

It was once held that a devise of such an equity in freeholds would be good without any further act to bar the entail(*s*): yet it has been now long determined that a recovery may be suffered of an equity; and that it is as essential to dock such equitable entail, as it would be to destroy a legal one (*t*). It should seem, therefore, that a recovery may be suffered, in the manor court, of an equity in copyholds, analogous to that relative to freehold property: and, indeed, that the same mode should be adopted for the barring of an equitable as it would be necessary to pursue for the purpose of de-

(*r*) See 1 *Hen. Blackst.* 461. *Roe d. Eberall & al. &c. v. Lowe & al.*

(*s*) *Preced. in Chanc.* 228. *Woolnough v. Woolnough*. And see 5 *Ves.* 12-13. *Copyholds*. See 3 *Atk.* 815. *Radford v. Wilson*.

(*t*) 1 *Bro. Ch. Ca.* 72. *Boteler v. Allington*, and *Salvin v. Thornton*, there cited. And see 1 *P. Wms.* 91. *Legate v. Sewell*, and Mr. *Cox's* note (2)

destroying a legal entail : as by recovery where the special custom requires a recovery to bar a legal entail ; or by a surrender, where a surrender will bar an entail of the legal estate*.

Yet a court of equity will, under certain circumstances, relieve though the entail has not been properly barred ; or decree the trustees to surrender. As, where a person, being tenant in tail of the trust of a copyhold, requested the trustees to surrender to him ; and on their refusal to do so, brought his bill to compel them ; and pending such suit, went to the lord's court and desired to be admitted [permitted] to surrender, which was refused, because the legal estate was in the trustees ; and devised his interest ; it was decreed that the copyholds should pass by his will ; the entail and remainders being conceived as sufficiently barred (u).

Chancery will sometimes aid in case of a trust entail.

Again, a dormant entail shall be *presumed* [182]

(*) 3 Atk. 815. *Radford v. Wilson*.

(u) See 2 Vern. 583. *Otway v. Hudson & al.*

Presumption
that an estate
tail has been
destroyed.

to have been cut off, where several of the issue of the original tenant in tail have been admitted as heirs in fee-simple (w).

COVENANT to surrender COPYHOLDS, with
Declaration of Trusts, on Marriage, &c.

Recital of
marriage, &c.

THIS INDENTURE of three parts, made, &c.
BETWEEN *H. W. W.* of, &c. and *M.* his
wife, of the first part; *R. L.* of, &c. (the
father of the said *M.*) of the second part;
and *D. B.* of, &c. and *S. C. P.* of, &c. of
the third part. WHEREAS a marriage has
been lately had and solemnized by and be-
tween the said *H. W. W.* and *M.* his now
wife; and, on the treaty for such marriage,
it was agreed between and by the said
H. W. W., *M.* his said wife, and the said
R. L. that the said *H. W. W.* should re-

(w) *Clayton's Rep.* 26. *Wadsworth's case*. And see
1 *Hen. Blackst.* 461. in *Roe v. Lowe*, where *Lough-
borough*, C. J. said "there was no length of possession
against the entail on which to presume a surrender;"
which acknowledges that a surrender *may* be presumed.

ceive with the said *M.* as and for her marriage portion, of the said *R. L.* the sum of ———, at the time and in the manner hereinafter mentioned; and in consideration thereof and of the said marriage, and in order to secure a maintenance for the said *M.* (in [183] case she should survive her said husband) and also a provision for the issue of such marriage (if any such might be) that he the said *H. W. W.* should, at his own charges, surrender, limit, and convey, *All, &c. (the* Parcels. *premises)* situate, &c. and within, and holden of, the manor of *F.* by copy of court roll, of which he is now seised in fee at the will of the lord, according to the custom of the said manor, to the uses, ends, intents, and purposes hereinafter particularly expressed and declared of and concerning the same. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in order to effectuate the same, and for and in consideration of the said sum of ——— payable as hereinafter is covenanted and expressed, and also of 10s. by each of them the said *D. B.* and *S. C. P. &c.* (the receipt of which several sums of 10s. is hereby acknowledged) and for divers other good causes and considerations him hereunto

Covenant by
the husband
to get himself
admitted ;

and, on such
admission, to
surrender the
same premises
to the use of
himself for life,
[184]

with remainder
in fee to
trustees.

Trusts de-
clared.

moving, he the said *H. W. W.* for himself, his heirs, executors, and administrators, DOTH covenant with the said *D. B.* and *S. C. P.* their heirs and assigns, by these presents in manner following, (that is to say,) that he the said *H. W. W.* shall and will at the next general customary court, or in the mean time, at some special court to be held for the said manor of *F.* at his own costs and charges, cause himself to be admitted tenant to all and singular (*the premises*) according to the custom of the said manor ; and, afterwards at the same court, surrender the said (*premises*) with the appurtenances, into the hands of the lord of the said manor in due form, *To the use and behoof* of him the said *H. W. W.* for and during the term of his natural life ; and from and immediately after the determination of that estate, *To the use and behoof* of them the said *D. B.* and *S. C. P.* their heirs and assigns for ever, at the will of the lord according to the custom of the said manor. NEVERTHELESS, as to the estate and interest of them the said *D. B.* and *S. C. P.* their heirs and assigns, of and in the said premises, it is hereby declared and agreed by and between all the said parties to these

presents, and the true intent and meaning of them, and of each of them is, that the same are to be so surrendered and limited to them IN TRUST only, and to and for the several uses, ends, intents, and purposes following, (that is to say) *In trust* that they the said *D. B.* and *S. C. P.* or the survivor of them, or the heirs of such survivor; do, immediately on the determination of the estate so to be granted, surrendered, or limited to the said *H. W. W.* possess themselves of the said (*premises*;) and thenceforth, from time to time, receive and take the yearly and other rents, issues, and profits thereof; and pay the same over, (after discharging all taxes, &c.) (*To the widow for life, in the common form*) And from and immediately after the decease of the said *M.* the now wife of the said *H. W. W.* Then upon this further trust, that the said *D. B.* and *S. C. P.* and their heirs shall stand and be seised of the said premises IN TRUST for the heirs of the body of the said *H. W. W.* (*x*) on the body of the said

Trustees to possess themselves of the premises on the husband's death.

And to receive and pay over the profits to widow for life.

Then in trust for the issue in tail.

[185]

(*x*) The *legal* estate is here limited to the husband for life, and the *trust* (for the statute of uses does not extend to copyholds) (*y*), is limited to the heirs of *his*

(*y*) 2 *Ves.* 257. *Cro. Car.* 44.

With remainder to the husband in fee.

Covenant by husband to get himself admitted after such surrender.

And to pay the fine for the whole fee. See
1 Vent. 260.
1 Mod. 121.
1 Burr. 212.
&c. and post.
ch. 7. Of Fines.

M. his now wife, begotten or to be begotten; *And* in default of such issue, IN TRUST for him the said *H. W. W.* his heirs and assigns for ever. *And* the said *H. W. W.*, for himself, his heirs, executors, and administrators, doth hereby further covenant with the said *D. B.* and *S. C. P.* and their heirs, that he the said *H. W. W.* will at the said next court to be held for the said manor of *F.* as aforesaid, immediately after his surrendering the said (*premises*) to the uses hereinbefore expressed, cause himself, at his own proper costs and charges, to be duly admitted to the same; and, on such subsequent admission, shall and will pay such fine or fines as a person admitted tenant to all and singular the said (*premises*)

body; so that the estates cannot coalesce (z), and, consequently, the entail is not barrable by the husband; and, as to the wife, the entail is *not* to the heirs of *her* body, but to those of the husband's only; and, therefore, she has nothing to do with it. For it should be observed that the statute of *Henry 7th*, to restrain women from alienating the lands entailed *ex provisione viri*, does not affect copyhold estates (a).

(z) 1 *Fearne*, 68, &c: *Co. Litt.* 26. b. n. 3. &c. *Watk. on Desc.* 160.

(a) 2 *Ves.* 358. N. *Cruise on Recoveries*, 158.

in fee-simple, usually, and of right ought, and hath been accustomed to pay; accord- [186]
 ing to the custom and usage of the manor of *F.* aforesaid: So THAT the remainder in fee, of and in the said (*premises*,) and of every part thereof, may, on such his re-admission, become fixed and vested in them the said *D. B.* and *S. C. P.* and their heirs; AND so that they may be well and sufficiently seised of the (*premises*) according to the custom of the said manor, without being required, or in anywise compellable, to be themselves admitted on the determination of the estate for life of the said *H. W. W.* or to pay any fine or fines on their accession to the same in possession, on the determination of such estate. AND ALSO that he the said *H. W. W.* shall and will, at such next court, at his own costs and charges as aforesaid, cause and procure (as far as in him shall lie) the declaration of the trusts hereby created, or intended so to be, and hereinbefore particularly set forth and specified, to be duly and justly entered and inserted on the court rolls of the said manor of *F.* To the end and intent that the same trusts, and the intention of the several parties to these presents, may be the more easily

And also to have the trusts inserted in the court rolls. See 1 Just. Blackst. Rep. 167. and post. ch. 5.

Covenant that
he is seised in
fee according
to the custom.

[187]

And has power
to settle the
premises.

And for further
assurance.

and effectually ascertained, evidenced, and preserved. AND ALSO that he the said *H. W. W.* at the time of the execution of these presents, is lawfully and absolutely (*b*) seised of the said (*premises*) to him and his heirs in fee-simple, at the will of the lord, according to the custom of the said manor of *F.* And that he hath full power to settle and assure the same, and every part thereof, in the manner, and to the uses, ends, intents, and purposes herein before particularly expressed, and according to the true intent and meaning of these presents. And also that he the said *H. W. W.* and his heirs, shall and will, at his and their own costs and charges, on the request of them the said *D. B.* and *S. C. P.* or their heirs, make, do, &c. or cause, &c. all and every such further and other acts and deeds as they the said *D. B.* and *S. C. P.* or their heirs, or their counsel learned in the law, shall reasonably advise, and require, and he, the said *H. W.*

(*b*) The word *absolute* is here used as contradistinguished from *conditional* or *defeasible*, with respect to the estate of the tenant; and not as to the nature of his estate with respect to the lord; for a copyholder has only a fee-simple *secundum quid*. (See 4 Co. 22. a.)

W. or his heirs, as a copyhold tenant, or copyhold tenants, holding of the said manor, of *F.* in fee simple at the will of the lord, may lawfully and rightfully do, &c. or cause, &c. for the further, better, and more effectually settling and assuring the said (*premises*), to the uses, ends, intents, and purposes, hereinbefore particularly specified and declared of and concerning the same, and according to the true intent and meaning of these presents and of the parties hereto.

And the said *R. L.* for himself, &c. (*Covenant to pay the marriage portion on a day to come.*) And the said *D. B.* and *S. C. P.* for themselves severally and respectively, and for their several and respective heirs and assigns, (but not each for the other of them), do hereby covenant with the said *H. W. W.* his heirs and assigns, that, on the request, (signified in writing to them respectively), and at the costs and charges of any of the issue of the said recited marriage, who shall become entitled to an equitable estate tail, under or by virtue of these presents, of and in the said (*premises*) (such issue being at the time of such request of the age of twenty-one years) or after the fulfilling and satisfaction of the trusts hereby created or raised,

Covenant by the wife's father to pay the portion.

[188]

Covenant by trustees to surrender the premises on the trust being fulfilled.

Trustees to retain expenses, and not to be answerable for each other.

or intended so to be, then on the request (signified in writing as aforesaid) and at the costs and charges of him the said *H. W. W.* his heirs or assigns, surrender and yield up, according to the custom of the said manor of *F.* the legal estate then in them vested of and in the said (*premises*) and every part thereof, To the use and behoof of such issue, his, her, or their heirs and assigns; or to the use and behoof of him the said *H. W. W.* his heirs and assigns (as the case may be); or to such person or persons, and for such estate or estates, uses, ends, intents, and purposes, as such issue, or the said *H. W. W.* his heirs or assigns respectively, shall direct or appoint. And lastly, &c. (*here a clause enabling the trustees to retain their expenses, &c. and not to be answerable for each other.*)

[189]

ENTRY of the PROCEEDINGS on the ROLL.

Presentment of the death of the husband's father.

“AND ALSO at this court the said homage present, that, since the last court, *G. W.* of, &c. died seised of *All* that messuage, &c. which he held to him and his heirs by copy of court roll, at the will of the lord, according to the custom of this

manor : *Whereupon* there happened to the lord for an heriot, one ox, being the best Heriot. beast of which the said *G. W.* died possessed, and which was seized by the beadle of this manor on behalf of the lord. *And* the said homage further present, that *H. W. W.* is the only son and customary heir of the said Heir. *G. W.*

WHEREUPON proclamation was duly made Proclamation. at the same court, for the said *H. W. W.* to come in and be admitted to the said message, &c. as his right and inheritance, as in such cases is used and accustomed within the manor aforesaid.

AND UPON SUCH PROCLAMATION BEING MADE, as aforesaid, came the said *H. W. W.* in his proper person, the same court being then sitting, and prayed to be admitted to the said message, &c. as his right and inheritance : To whom the lord of the said manor, by his said steward, granted seisin thereof by the rod : To hold to him the said *H. W. W.* and his heirs for ever, by copy of court roll, at the will of the lord, according to the custom of the said manor ; by the rents, duties, and services, therefore due,

Admission of
H. W. W. as
heir.

[190]

and of right accustomed. *And* he was admitted tenant thereof in form aforesaid ; gave to the lord for his fine 60*l.* and did to the lord his fealty.

Surrender by
H. W. W.

To the use of
himself for life,

with remain-
der to trustees
in fee.

Admission of
H. W. W.

AND IMMEDIATELY AFTERWARDS, the said *H. W. W.* surrendered into the hands of the lord of the said manor by the rod, and acceptance of the said steward, the said messuage, &c. to which he had at this court been admitted ; and all his estate, right, title, and interest, of, in, and to, the same and every part thereof, *To the use and behoof* of him the said *H. W. W.* for and during the term of his natural life ; *And* from and immediately after the determination of that estate, *To the use and behoof* of *D. B.* of, &c. and *S. C. P.* of, &c. their heirs and assigns for ever. AND THEREUPON the said *H. W. W.* being present in court in his own proper person, prayed to be admitted tenant to all and singular the said last-mentioned premises, according to the form and effect of the said surrender : *To whom* the lord of the said manor, by his said steward, granted seisin thereof by the rod ; *To hold* to him the said *H. W. W.* for and during the term of his natural life, with remainder

over to the said *D. B.* and *S. C. P.* their heirs and assigns, as in the said surrender is expressed, and according to the form and effect thereof, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services, therefore due and [191] of right accustomed: *And* he was admitted tenant thereof, in form aforesaid: and gave to the lord for a fine 60*l.* (such fine being *Fine.* assessed for the whole fee; that is to say, as well for the remainder over as for the particular estate :) But his fealty was pardoned; he having been aforetime sworn.

AND it was, previously to the said surrender, agreed and declared, by and between the said *H. W. W.*, *D. B.*, and *S. C. P.* in and by a certain deed, bearing date, &c. and made between the said *H. W. W.* &c. that the said *D. B.* and *S. C. P.* and their heirs, should take the estate so surrendered to them IN TRUST ONLY and for the purpose in the said deed expressed; and that the said *H. W. W.* should, so far as in him lay, cause such declaration of trust to be inserted upon the rolls of this manor, for the better preserving and evidencing the same: NOW THEREFORE, on the prayer of the said *H. W. W.* and with

Declaration of
trust enrolled.

the consent of the said *D. B.* and *S. C. P.* the same is, by the favour of the lord, thus enrolled :

“ NEVERTHELESS, as to the estate and interest of the said *D. B.* and *S. C. P.*” &c. (*Here exemplify the declaration of trust, verbatim**).

* [The lord admitting under a deed of settlement has a right previously to call upon the person claiming to be admitted, to state the uses of such settlement. If the entry upon the roll be simply, “ to the uses of such settlement,” it was the fault of the steward to receive it, for he had a distinct right to call for a specification of those uses. *Per* the LORD CHANCELLOR, in *Lord Kensington v. Mansell*, 13 *Ves.* 240.]

CHAP. V.

Of REMAINDERS, EXECUTORY INTERESTS, and TRUSTS.

[192]

Limitation of
remainders in
a surrender.

A PERSON, seised of an estate by copy, may surrender it to the use of as many persons, successively, by way of remainder, as he pleases; so that the several portions of the estate so limited, exceed not his own interest in the premises: as, if he have an estate in fee, he may surrender to the use of *A.* for life, with remainder to *B.* and the heirs of his body, with remainder to *C.* in fee (c).

In speaking, therefore, of remainders of copyholds, we shall confine ourselves to

(c) *Cro. Eliz.* 373. *Stanton. v. Barnes.* 4 Co. 23. a. *Bullock & Dibley, &c.* To *A.* for life, remainder to *B.* and *A.* die before grant (admission), grant to *B.* good. *Dyer*, 251. a. pl. 90.

those points in which they differ from those of freehold property.

And, *firstly*, then, as to *Contingent Remainders*.

Contingent remainders; and of the time in which they must become vested.

[193]

With respect to contingent remainders of freeholds, it is a settled rule that they must vest during the continuance of the particular estate, or *eo instanti* that it determine. And the reasons of this rule were, that there must have been a tenant in existence to perform the services of the feud, and to answer to the *præcipe* of a stranger, and also, as the remainders were only portions of the same estate, equally with the particular one, and so formed together but one and the same estate, no portion could exist when the estate of which it was a portion was utterly at an end. But these reasons, it is said, do not immediately apply to copyholds; as the freehold remains in the lord (*d*).

(*d*) See 3 *Atk.* 13. *Lovell v. Lovell*, 2 *Vern.* 243. *Mildmay v. Hungerford*. See 1 *Fearne*, 469. [*Ed. Butl.* 319.] also 4 *Durnf. & East.* 64. *Per Kenyon*, C. J. in *Doe v. Martin*, [*& 10 Ves.* 282]. It is agreed, on all hands, that the admission of the par-

Yet it should be observed, however such observation has been so frequently suffered to escape, that we have nothing to do with the *freehold* in these cases; but the subject of our inquiry is the *copyhold* interest. It matters not, therefore, in whom the freehold is: and it appears rather extraordinary that an estate of *freehold* in the lord should be supposed capable of supporting a *copyhold remainder*, since they are wholly distinct in their nature.

In the case of freeholds, there must have been a tenant of the freehold against whom a *præcipe* might have been brought: but no *præcipe* can be brought of copyhold lands as such. Claims to copyhold interests must be supported against strangers by *plaint*, [194] and against the lord by petition. With re-

ticular tenant is that of the remainder-men; *because* the particular estate and the remainders form but *one* estate. "For the feme being admitted to the particular estate, the remainder depends thereupon and vests without other admittance; for they make but one estate." *Cro. Jac.* 31. *Auncelme v. Auncelme*. See 4 *Leon.* 9. pl. 38. & 111. pl. 226. *Cro. Eliz.* 504. *Gypen v. Bunney*.

spect to the plaint, one would presume that the law would be analogous to that of the *præcipe*; and, consequently, that the rule *would* therefore apply: since there seems to be the same reason for an existing tenant to the latter as to the former*. Though, perhaps, the right to sue by petition, when the premises were in the hands of the lord, may be supposed to do away its necessity.

A distinction, however, has been ingeniously made with respect to the destruction of contingent remainders of copyhold in the cases of the death or forfeiture of the particular tenant. Thus, says the late *Chief Baron Gilbert (c)*, if an estate be given to a

* *Bromfield & Crowder*, C. B. Trin. 45 Geo. 3. on a case from Chancery. *Manfield*, C. J. "No sense in the thing at all; and the idea, such as it is, is a miserable one: for although in a copyhold there is no tenant to the *præcipe*, yet we know there is to the plaint.——" "The reason," (of the distinction as to the act of God, and that of the party,) "is not any principle. If in one case the lord supports it, why not in all?"—"Nonsense; the lord has not the copyhold. The freehold in the lord, and the copyholder's interest, are as distinct as a legal estate and a trust."

(c) *Tenures*, 265, and see 1 *Fearne*, 471; [Ed. *Bull.* 320.] and 2 *Ves. Jun.* 209. 214. 233. *Habergham v. Vincent*.

copyholder for life, the remainder to the right heirs of *I. S.* if the tenant for life die, living *I. S.* there it seems clear that the remainder is destroyed; for it cannot take effect as by the limitation it ought. But then if tenant for life in that case had committed a forfeiture, or made a surrender, and then, living tenant for life, *I. S.* had died, it seems to be very clear that his right heir might take; for his estate in remainder was not to take effect after the determination of the interest of tenant for life, but after his death; and when that happened, he was able to take.

But this distinction does not seem to be [195]
anywise dependent upon the rule that a contingent remainder must vest during the continuance of the particular estate, or *eo instanti* that it determine, since, in the latter case, the estate of the heir was permitted to commence long after the particular estate was at an end. It could not, therefore, be strictly a *remainder*; for it could not be a portion of an estate which had ceased to exist. It should therefore seem that the reason of the distinction is this: as the lord accepted a surrender to the use of *A.* for

life, and after his life ended, to the heir of *I. S.* he shall be compelled to grant the estate to the heir of *I. S.* on the death of *A.* in consequence of his own act. But the estate to the heir of *I. S.* was not to commence till the death of *A.* and, therefore, if *A.* determine his own estate in his lifetime, the lord must enter and enjoy the lands, for this plain reason, because there is no one else to do so. *A.* has forfeited or abandoned his claim, and that of the heir of *I. S.* is not commenced. On the death of *A.* however, the lord must re-grant to the heir of *I. S.* if an heir of *I. S.* be in existence, (*i. e.* if *I. S.* die before *A.* and leave an heir :) but if *I. S.* survive *A.* there would be no one to whom to grant : and in this respect is the ulterior estate contingent.

[196]

It should seem, therefore, that as to a contingent *remainder* of copyholds, the rule must apply equally as to such remainders of freeholds : for, on the determination of the particular estate, the whole estate would be destroyed ; and, consequently, no *remainder* of that estate would exist. But in case the person who was not *in esse* come into existence, and be capable of taking at the

time when the estate limited to him was designated to commence, the lord shall be compellable to grant such estate to him, agreeably to his own act : not indeed as a *remainder* : for a remainder cannot exist when the estate of which it was a portion is no more ; for, by all the logic in the world, if the *whole* be destroyed and gone, there can be no *part* or *portion* of it remaining.

It appears, indeed, to be acknowledged that the rule applies to copyholds equally as to freeholds, with respect to the vesting of the remainder during the existence of the particular estate *so far as the original limitation is concerned* : for even on the assumption that the freehold in the lord *will* preserve a contingent remainder of copyholds so as to prevent its destruction by the tenant for life, yet it is confessed that it can not support it when the preceding estates are expired (*f*).

As the particular estate and remainders

(*f*) *Gilb. Ten.* 265. 303. 2 *Ves. Jun.* 214. 233. *Habergham v. Vincent.* 1 *Fearne*, 471. [*Ed. Butl.* 320.]

Admission of
a remainder-
man.

compose but one estate, the admission of the particular tenant is the admission of those in remainder also; and but one fine will be due (*g*).

[197]

When a re-
mainder shall
commence in
possession.

If a copyhold be granted* to *A.* for life, with remainder over to *B.*; *B.*'s estate shall not come into possession till *A.*'s death, though *A.*'s estate be determined in his life time. The commencement of *B.*'s estate in possession is expressly designated by the grant, *i. e.* on the death of *A.* In the interim, therefore, between the determination of *A.*'s estate and the death of *A.*, the lord may enter; as no one else is entitled (*h*). It is, therefore, proper, in limit-

(*g*) See *post.* ch. 6 & 7.

* But *quære* if it be not otherwise in the case of a *surrender*. As, if a copyholder in fee surrender to the use of *A.* for life, and after his decease to *B.* For it cannot be intended, that the copyholder meant to benefit the lord. (See *of Freeholds*, 2 *Bl. Comm.* 274-5. Yet *q.* as to the analogy, as the remainderman of copyholds may enter if the particular tenant be admitted.)

(*h*) 9 Co. 107. a. *Margaret Podger's case*. 12 *Mod.* 128. *Head. v. Tyler*. [And see 2 *Maule & Selwyn*, 68. *Doe d. Folkes & al. v. Clements*, and *infra*, p. [341].]

ing a remainder of copyholds, to limit it expressly “to the use of *A.* for and during the term of his *natural* life (*i*), and, from and immediately after the determination * of that estate, by death, forfeiture, or otherwise (*k*), to the use of, &c.”

We come now to the inquiry whether an estate can be limited by a surrender so as to take effect only *in futuro*; and whether a fee can be limited after a fee by such a surrender of copyhold premises.

(*i*). See *Watk.* No. cxxiii. to *Gilh. Ten.* 454.

* It is sometimes said “after the forfeiture, *surrender*, &c. of the estate of *A.*” But it should be remembered, that the surrender must be such a surrender as will determine *A.*’s estate, and not a surrender intended as the mean of conveyance to another person, or the estate in remainder shall not commence. If *A.* surrender his estate to the use of a stranger, he would surrender it with a view to its continuance, and not with an intention of destroying it. So soon as the estate of *A.* is *relinquished*, so soon shall the estate of *B.* commence; but the lord cannot abridge the estate of *A.*, or deprive him of his right to alien. See 2 *Freem.* 118. ca. 134. 1 *Lev.* 20. *Chantrell v. Randall.*

(*k*) 3 *Levinz*, 94. *Strode v. Dennison.* Sir T. Jones, 189. S. C. under the name of *Bennison v. Strode.*

Of a surrender
to commence
in futuro.

[198]

That a surrender of copyholds is to be construed as a deed at common law, and not as a will, has been already noticed (*l*): And that an estate of freehold to commence *in futuro*, could not be created by a deed at common law, or a fee be permitted to be limited on a fee by such species of conveyance, is also sufficiently established: and it should seem therefore to follow, that a surrender cannot be made to commence *in futuro*; and that a fee limited on a fee by such surrender would not be good.

Habendum af-
ter surrender-
or's death.

It has been repeatedly adjudged, that if a copyholder in fee surrender to the use of another, *habendum* after the death of the surrenderor, it would be void (*m*).

(*l*) *Ante*, p. [99] [108] [110].

(*m*) *Cro. Jac.* 376. *Simpson v. Southern*, and *Cro. Car.* 366. *Seagood v. Hone & Ux.* And see *Co. Copyh.* s. 35. *Tr.* p. 82. & 6 *Vin.* 216. *Copyh.* (L. e.) pl. 6. *Godb.* 265. *Ca.* 364. *Simpson's case*, & 451. *Ca.* 518. See also *Comyns's Dig.* 383. *Copyh.* (F. 6.) 4 *Leon.* 8. *Clamp v. Clamp.* and 6 *Durnf. & East*, 63. *Doe d. Ibbot v. Cowling.* But see *Clayton*, 21. *Holsworth's case*, where such a surrender is said to have been held good by the custom of the manor, & q.

But whether a fee might be limited after a fee of copyholds by surrender, is a point on which we find less certainty in our books. Fee upon fee.

The reasoning of the late *Chief Baron Gilbert* on this subject is ingenious and forcible ; and by giving it in his own words, with the observations of Mr. *Fearne* on those of the learned baron, and by following both up with some remarks on the authorities referred to by them, will, perhaps, best enable us to develop the truth.

“ If a surrender,” says the Chief Baron, “ be to the use of *I. S. habendum* after the death of the surrenderor for life, this is a void surrender, being but one entire limitation ; but if the surrender were to him generally, *habendum* after the death of *I. R.* *quære* if the *habendum* be void or not ? But certain it is, that if the surrender be, *habendum* after the death of the surrenderor, *ad opus & usum* of his child then *in ventre sa mere*, such surrender is merely void ; for a copyholder cannot surrender *habendum* after his death, and so reserve to himself a particular estate, no more than a freeholder

Cro. Car. 867.
Cro. Elis. 255.

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Cro. Jac. 376.
Cro. Elis. 29.
1 *Saund.* 151.
1 *Roll. Rep.*
135. *March*,
177.

can convey so. There was a clause in a surrender: "and if it happen that the child die before his full age, or day of marriage, then I do surrender the said lands to the use of my cousin *I. S.* his heirs and assigns:" this surrender was held to be void as to *I. S.* because the contingency did not happen in the life of the surrenderor; and a man cannot surrender to take effect after his death; it was not resolved absolutely that a fee may be limited upon a fee. *Vide* the book cited in the margin, to explain these matters. This case, as reported by *Rolle* (as it is said in *Lex Cust.* 120.) is an authority that such future use is good. This is the same case as is reported by *Croke*, but directly contrary, and as it seems not grounded upon so good reason as the resolution in *Croke*; for, as before has been shewn, surrenders are not construed so favourably as wills (though

Coke says they should be taken according to the intent of the surrenderor); neither is there the same reason; for a man may as well order a surrender in his life-time, according to the rules of law, as he may any deed to pass away a freehold estate; so that the intention of the party hath not so strong an operation in a surrender, as in a will; and,

1 *Roll. Rep.*
109. 138. 253.

Co. Cop. 97.

therefore, that reason will not support a fee upon a fee in that case, as it doth in a will, and then it is not at all like an use or trust, in which a fee may be limited upon a fee, because there the legal estate was not by any limitation extended farther than one entire fee-simple, which would be to extend an estate further than its original creation warranted. But an use after an use in fee, was but only to give an equitable right to somebody to have the profits, as long as the estate in fee lasted; which is highly reasonable, that a man that hath a legal estate should dispose of the profits of that estate as long as it should last; for so long had he a right to the profits himself, which right he may transfer to others, and there is no harm done to any body: but to extend the legal estate would be to keep the lord of the escheat eternally out; and it is only allowed in a will, because of the want of counsel to advise with how to do it. But an use in a surrender is not like this use; for he that hath an use by a surrender is to be admitted to the legal estate, and is not seised to an use; and, therefore, if a fee might be limited upon a fee, in such cases, the legal estate would be extended farther than its original

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Sympson
v. Southern,
Cro. Jac. §76

Lex Cust. 121.
2 Roll. Rep.
109. 138. 252.
2 Roll. Abr.
791. (P) pl. 2.
(S) pl. 8. Gilb.
Ten. 244.

creation warranted, and a great estate be made out of a little one; so that it seems that a fee upon a fee in copyholds is not good (n).” Mr. *Fearne* says (o), “It appears to have been a question whether limitations of this nature (shifting or secondary uses) were good in surrenders of copyhold estates. Thus, where there was a surrender, *habendum* from the death of the surrenderor, to the use of his child then in *ventre sa mere*, and his heirs and assigns for ever, and if the child die before age or marriage, then to the use of *I. S.* and his heirs and assigns, *Croke* says, it was resolved that the surrender to the use of *I. S.* was void, for that a man could not make such a conditional surrender to operate in future. On the other hand, the same case, as reported by *Rolle*, is cited in *Lex Custumaria* as an authority that such further uses are good, and that a fee may be limited on a fee upon a contingency in copyhold estates. And this the case in *Rolle’s* Abridgment seems to leave undecided. But

(n) *Gilb. Ten. 260. 263.*

(o) *Conting. Rem. 416. [Ed. Butl. 276.]*

in *Gilbert's Tenures* it is said, that such a resolution seems not to be grounded on so good reason, as the contrary resolution in *Croke*; for the use upon a surrender of a copyhold is not like an use or trust at common law: but he who is admitted upon a surrender, is admitted to the legal *customary* estate, and is not seised *to an use*, therefore uses upon surrenders are in general governed entirely by the same rules as conveyances at common law, in which such limitations were not allowable; and that upon this principle it seems a fee upon a fee, in case of a surrender of copyholds, is not good, any more than in a conveyance at common law. But the above opinion of *Gilbert* is, I think, excluded by decided cases; for the validity of conditional limitations in surrenders of copyholds, appears to have been admitted in the above cited case of *Stocker v. Edwards*, or *Edwards v. Hammond*. And the decision in the case of *Simpson v. Southern*, may be referred to the point of the *habendum* after the death of the surrenderor being void; taking that as *the conditional future operation*, which was denied to the surrender. And in the case of *Paulter v. Cornhill*, *Beaumont*, Justice, conceived the


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Vide *Fearne*,
p. 173, and
vide *Welcock*
v. Hammond,
cited 3 Co
Rep. 20. b.
Brian v. Cam-
sen, 3 Leon.
115.

Cro. Eliz. 361.

limitation of a fee upon a fee as good in surrenders of copyholds as in uses of lands upon a feoffment.

Bently v. Delamore,
1 *Freem.* 267,
268. and vide
Calth. Read-
ings, 31, 32,
for the same
point. And
vide *Taylor*
v. Taylor,
1 *Atk.* 386.

“ So, in the case of a surrender of copyholds, to the intent the lord should admit . whom the surrenderor intended to marry, after marriage; until marriage to the use of himself and his heirs, and after marriage to the use of himself and *A.* in tail; the whole court of *C. B.* held that it was good enough to limit a remainder upon a contingent fee in copyholds, as in case of mortgages of copyholds a surrender *in futuro* is good, for the freehold remains in the lord.”

Case of *Simp-*
son & South-
wood examined.

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But as to the case of *Simpson* and *Southwood*, or *Sympson* and *Sothorn*, it is very differently reported in the books*. As it is reported by *Rolle (p)*, judgment is said to have been given for the party who claimed the ulterior fee. But the report is very obscure, if not contradictory, in many places.

* See *March*, 177-9. *Bambridge v. Whitton & Ux.*
(*p*) 1 *Roll. Rep.* 109. 137. 253.

The court is there said to have been of opinion with *Coke* ; but *Coke's* argument, both in *Rolle* and *Bulstrode*, seems incompatible with such an opinion.

In *Croke's James* (*q*) the judgment is said to have been given for the party claiming from the heir at law ; and so it is said in *Godbolt* (*r*) and *Bulstrode* (*s*).

In *Rolle's Abridgment* (*t*) it is first noticed with a “*dubitatur* ;” and afterwards, when it is mentioned as adjudged, it is declared that the ulterior fee never arose, as the contingency did not happen in the life of the surrenderor (*u*).

In *Lex Custumaria* (*w*) the ulterior limitation is said to have been good ; but the author rests himself on the statement in [204]

(*q*) p. 376.

(*r*) p. 264. *Ca.* 364.

(*s*) 2 *Bulst.* 272.

(*t*) 2 *Roll. Abr.* 791. *Uses*, (P.) *pl.* 2.

(*u*) 2 *Roll. Abr.* 794. *pl.* 8.

(*w*) p. 121. *ch.* 15.

2 *Rolle's Abridgment*, without inserting the "*dubitatur*."

Indeed, he only translates from that of *Rolle*; and, with *Rolle*, calls the ulterior fee a *Remainder*.

As, therefore, it is only in *Rolle's Reports* that the judgment of the court is said to have been given in favour of the person claiming the ulterior fee; and as *Croke*, *Godbolt*, *Bulstrode*, and even *Rolle* himself in another work, declare that the judgment was given against him; and as the author of *Lex Custumaria* is no authority himself, but depends only upon a quotation from *Rolle*, without noticing the *dubitatur* inserted by that writer; this case of *Simpson and Southern*, ought not, I think, to be regarded as establishing the doctrine that a fee may be limited on a fee in a surrender of copyholds.

*Stocker and
Edwards.*

In the case of *Stocker v. Edwards*, as reported by *Shower* (x), a conditional limitation was said to be good in a surrender.

(x) 2 *Show*, 398.

But if the case of *Stocker & Edwards* be the same with *Edwards & Hammond*, as reported in *Levinz* (*y*), which Mr. *Fearne* appears so to consider (*z*), it is indeed “some- [205] what differently reported” by the latter writer.

In *Shower* the surrender was to the use of the surrenderor for life, and after to the use of *John* his youngest son, *and the heirs of his body*, if he attained to the age of eighteen years ; and if he died before he attained to that age *without issue male* then to his right heirs : whereas in *Levinz*, the limitation was to the use of the surrenderor for life, and afterwards to the use of his eldest son and his *heirs*, if he lived to the age of twenty-one years : provided, and upon condition, that if he died before twenty-one, that then it should remain to the surrenderor and his heirs.

But what puts an end to the application

(*y*) 3 *Levinz*, 132.

(*z*) *Conting. Rem.* 372, in margin. [*Ed. Butl.* 244.]

of the case in *Levinz*, is, that in that case the surrender was to the *use of a will*; though that important circumstance is omitted in the translation of *Levinz*: the words, in the French of *Levinz*, are, that the copyholder surrendered “*a son volunt, & devise al use luy mesme pur vie, et apres al use son eigné Fitz & ses Heyres, s’il vivra al age de 21 anns*; provided, &c.” as above.

Welcock & Hammond, Brian & Cawsen, Taylor & Taylor.

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The case of *Welcock & Hammond*, cited by *Lord Coke* (a), was also on a surrender to will; as was the case of *Brian v. Cawsen*, in *Leonard* (b), and also that of *Taylor & Taylor*, in *Atkins* (c).

Paulter & Cornhill.

In the case of *Paulter v. Cornhill* (d), indeed, *Beaumont, Justice*, “conceived a fee limited upon a fee by a surrender to be good enough: for,” said he, “it shall be as an use limited upon a feoffment; and these uses shall rise out of the first surrender.”

(a) 3 Co. 20. b.

(b) 3 Leon. 115.

(c) 1 Atk. 386.

(d) Cro. Eliz. 361.

But as to the point whether a fee might be so limited on a fee, it is observable that we are informed by the reporter, that "the court spake not much thereto, but willed to have it specially found."

That of *Bently v. Delamor*, in 1 *Freeman* *Bently & Delamor.* (e), indeed, so far as it goes, countenances the doctrine that a fee may be limited on a fee by surrender. But that case is very loosely given. And it is there said, that a surrender *in futuro* is good; and the mischief [here seems an omission in the report] for the freehold remains in the lord." Now the validity of a surrender to commence *in futuro* has already been remarked on.

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The passage referred to in *Calthorpe* *Calthorpe.* supports the position: his words are (f) these: "If a copyhold be surrendered to the use of I. S. and his heirs, until he shall marry A. G. and after the said marriage then to the use of them two in tail special, if after

(e) p. 267-8.

(f) p. 31-2.

they do marry, then is the surrender to them in tail, and till then to him in fee.”

Upon the whole, therefore, we find that the case of *Simpson* and *Southern* militates against, rather than supports, the doctrine, that a fee may be limited on a fee of copyholds by surrender :—that the passage in *Lex Custumaria* cannot be a better authority than the book it rests upon ; and, in truth, that the extract it gives is not faithfully given ; it being delivered absolutely, when it was originally accompanied with a *dubitatur* :—that the case of *Stocker* and *Edwards* in *Shower* is shaken by the report of what Mr. *Fearne* himself regarded as the same case in *Levinz* ; and that the case in *Levinz* was on a surrender to the use of a will :—that those of *Welcock* and *Hammond*, *Brien* and *Cawsen*, and *Taylor* and *Taylor*, were on surrenders to will also :—that in the case of *Paulter* and *Cornhill*, the opinion of *Beaumont* was not acceded to by the court ; but was in itself founded upon a principle, which, it is presumed, has been already disproved ; namely, that the limitation should be considered as *an use* limited on a feoffment :—that the case of *Bently* and *Delamor*

is so very loosely given, and so filled with absurdity, that if it asserts that a surrender to commence *in futuro* is good, it might easily admit the other position; that if it is erroneous in one instance, it has no great claim to authority in the other:—that the doctrine, therefore, rests on the solitary passage in *Calthorpe*:—and that it is apparently inconsistent with principles which are indisputably sound: we shall not, therefore, perhaps, be justified in pronouncing, that a fee may be limited on a fee by a surrender of copyholds, even though such doctrine be advanced by Mr. *Fearne*.

That a fee cannot be limited on a fee by a common-law conveyance is not necessary to be proved: it is acknowledged. And surely if a surrender of copyhold lands is to be construed as a common-law conveyance, it must follow, as an inevitable consequence, that a fee cannot be limited on a fee by a surrender: for if a fee *can* be limited on a fee by a surrender, then a surrender *cannot* be construed as a conveyance at common law.

And, on the same principle, if an estate

for life, or of inheritance, cannot be created to commence *in futuro* by a common-law conveyance, and a surrender of copyholds ought to be construed as such conveyance at common law ought to be construed, then
[209] an estate for life or of inheritance cannot be created to commence *in futuro* by a surrender of copyholds. If we acknowledge the premises we must not deny the conclusion.

The protraction of the legal fee so ingeniously and forcibly urged by Baron *Gilbert*, is a strong additional argument against the doctrine. And, although the freehold of lands held by copy remains in the lord, yet, as the copyholder is to assert his right against strangers by plaint in the nature of the several writs at common law in real actions, and as at common law with respect to freeholds, there must have been a tenant against whom the person having right might sue his *præcipe*, so there must, with respect to copyholds, be a tenant against whom to prosecute his plaint (*g*). Hence too does it seem inevitably to follow, that, by a surren-

(*g*) See *ante*, p. 193-4.

der of copyholds, an estate for life or of inheritance cannot possibly be so created to commence *in futuro*.

Add to all this that the inconvenience which may arise to individuals by a strict adherence to the rules and principles of the common law in these cases (though the adherence to general rules and principles abundantly compensates for individual inconvenience,) yet such inconvenience may be easily avoided by surrendering to the use of a will [210] in the one case, and by limiting expressly the requisite particular estate to the surrenderor in the other.

If, indeed, a surrender be made to the use of *a will*, an executory or future interest may be created in copyholds (*h*) equally as in free. The question would then be on the construction of *a will* and not on the construction of *a surrender*.

An executory interest may be created by will.

Our next inquiry is into the modes of trans-

Of transferring or barring a contingent or executory interest.

(h) See the cases of *Edwards & Hammond*, *Welcock & Hammond*, *Brian & Cawsen*, and *Taylor & Taylor*, before cited, p. 204-5.

ferring or barring a remainder or executory interest in copyhold premises.

— of vested
remainders.

And as to the transfer of *vested* remainders, we have already seen that the remainderman, being in the seisin, may surrender his remainder into the hands of the lord to the use of another, equally as if it were an estate in possession (*i*).

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Estoppel.

But a person having only a contingent remainder or an executory interest, is not in the seisin ; and, consequently, has nothing which can be the subject of a surrender. And as it seems now to be settled that a surrender cannot operate by estoppel (*k*), it follows that a surrender cannot, at law, be a bar to such contingent or executory interest.

But as a consequence of this very circum-

(*i*) *Ante*, ch. 3. Of Surrenders, p. 58.

(*k*) See 2 Bro. Ch. Ca. *386. *Compton & Collinson*, 1 Ves. 230. *Taylor v. Philips*. 3 Durnf. & East, 365. *Goodtitle v. Morse*, 6 Durnf. & East, 63. *Doe d. Ibbot v. Cowling*. [See also 11 East, 185. *Doe d. Blacksell et al. v. Tomkins*.]

stance (*i. e.* their not being in the seisin or tenancy,) such contingent or executory interest may, it should seem, from the very nature of the thing, be transferred or barred by other modes of conveyance, in cases where the interest would be transmissible or barrable had the estate been freehold. For the person entitled to the contingent or executory interest would not become *tenant to the lord* till it actually fell into possession.

Whatever is descendible is said to be the subject of devise (*l*): now if such a contingent or executory interest in copyholds be descendible, and yet not the subject of a surrender, it surely would follow that it might be devised *without* a surrender; for otherwise a copyhold interest would be rendered inalienable in cases where a freehold interest of the same nature might be transferred; though no prejudice could accrue to others by reason of the alienation. An equity in copyholds is certainly devisable without the intervention of a surrender (*m*); because the tenancy is not affected by such devise: and as such equity could not be

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(*l*) See *Dougl.* 717. and the case of *Jones et al. v. Roe, Lessee of Perry.* 3 *Durnf. & East*, 88.

(*m*) See *ante*, ch. 3. Of a Surrender, p. [60]. [124].

surrendered, it could not be devised at all if it could not be devised *without* a surrender. An executory interest, therefore, of copyholds, not being the subject of a surrender, may surely be devised, if such executory interest would have been devisable had it been of freehold property (*n*).

Release, contract, &c.

Again; it should seem that such interest may be extinguished by release; or bound in equity by a contract or agreement for a valuable consideration (*o*).

Of a trust of copyholds.

Copyholds are equally subject to trusts (*p*) as freeholds, but they are not within the statute of uses (*q*). The person having the

(*n*) See 1 *Hen. Blackst.* 341. in *Compton v. Collinson*, where it is said—"The modes of conveying freehold and copyhold estates are different, but there is surely a fair argument from analogy, that a copyhold estate transmissible under the same circumstances as a freehold, should be governed by the same rules." And see 5 *Durnf. & East*, 111, towards the bottom of the page.

(*o*) See *Fearne's Executory Devises*, 58, &c. 522, &c.

(*p*) See *Alley's Rep.* 14. *The King v. Holland.* 2 *Ves.* 631. *Hinton v. Hinton.* 2 *Freem.* 123. *Cq.* 138.

(*q*) *Cro. Car.* 44. 2 *Ves.* 257.

legal estate is tenant to the lord*: the trust, therefore, may be created, modelled, transferred, or destroyed, without his concurrence †.

If a copyholder enter into an agreement [213] for sale ‡ of his copyhold, he shall be considered as a trustee for the purchaser; and shall be compelled, if living, or his heir if he die, to surrender according to the contract (r).

And as the custom of the manor can attach only on the legal estate, a limitation may sometimes be made of the trust, which perhaps the custom would not allow of the legal interest; thus we have seen that an

* [*Vid. infr.* p. [270] [293].]

† [As to the determination of a trust by the death either of the trustee or the *cestuy que trust* without heirs, *vid. infra*, p. [216].]

‡ So if he agree to mortgage, and receives the money, he shall be a trustee for the mortgagee, 1 *Cas. in Chanc.* 170. *Martin v. Seamore*. And see *Cas. T. Finch.* 272. *Patteson v. Thompson & al.* and *ibid.* 331. *Keen v. Sparrow & al.*

(r) 2 *Ves.* 631. *Hinton v. Hinton*, ante [145].

estate tail may be created in equity, where it might not, perhaps, be permitted at law (s).

Declaration
of trust.

If a trust be thus expressly declared, it is prudent to have the declaration enrolled in the books of the manor, that it may be preserved; and in order to avoid fraud*. The lord too, by consenting to the trust, would be bound by it, and not be permitted to claim against such his own act (t). In some instances a separate deed will be necessary to declare such trusts; as in the case of a charity; when the declaration should be by

(s) See *ante*, ch. 4. Of Entails, p. [159]. "The lord is not bound to admit a tenant according to the express terms of the trust, where contrary to the form of a legal conveyance." *Per* Lord Hardwicke. 3 *Atk.* 76-7. in *Car v. Ellison*.

* [For the form, &c. of such enrolment, *vid. supr.* p. [191]. The court rolls are the title deeds of copyholds; and a purchaser is affected with notice of the contents of the court rolls as far back as a search is necessary for the security of the title. *Per* the VICE CHANCELLOR, in *Pearce v. Newlyn*. 3 *Madd.* 186.]

(t) See 1 *Just. Blackst. Rep.* 167. [Both in cases of purchase and surrender to the use of a will, the lord does, by permitting the surrender to be entered upon the rolls, partake of the trust. *Per* the LORD CHANCELLOR, in *Williams v. Lord Lonsdale*, 3 *Ves.* 752].

deed enrolled in Chancery, pursuant to the statute (u). But it is better, if circumstances will permit, to have the trusts declared in the surrender, and so entered on the court rolls*.

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But a trust is frequently implied, or raised in equity, when no express declaration is made: as where a copyhold is granted to A., B., and C., and the whole† consideration money be paid by A., B. and C. shall

Implication.
21 *Vin. Abr.*
500. Trust,
(F.) and
Fonbl. on Eq.
vol. 2. p. 121.
ch. 5. s. 2.

(u) 9 *Geo. 2. c. 36. s. 1. Attorney General v. Lord Weymouth & al. Lincoln's Inn Hall. Hil. 16 Geo. 2. 1743.* [A conveyance of copyhold lands to charitable uses in the lifetime of the party, is within the stat. 9 *Geo. 2. c. 36*, and must therefore be made with the formalities required by that act. And the court will not, even after a long and undisturbed enjoyment, presume a bargain and sale, and enrolment of the same in Chancery. 3 *Barnew. & Ald. 149. Doe d. Howson v. Waterton.* See also *infra*. vol. ii. p. [192].]

* *Dowdswell v. Dowdswell. June 15. 27. Car. 2. (1 Cas. in Chanc. 261).* The bill was to have certain surrenders made, but not ingrossed, to be made and ingrossed. The plaintiff and defendant were brothers, and in this case agreed by the Lord Keeper, that the father being lord of the manor, could not declare the trusts of copyholds granted to his sons, though he took the profits always by their consent: *eadem die*, decreed between *Holford* and ———.

† See *Crop v. Norton, 2 Atk. 74.*

be regarded as trustees for *A.* (*w*) though the presumption of their being so, may, indeed, like all other presumptions, be rebutted, even by parol evidence (*x*).

But if the *cestuy que vie* or persons having the legal estate be the *child* * or *children* † of the person paying the consideration money, the presumption will be changed in favour of such child or children for whom the parent was morally obligated to provide, and the purchase shall be considered as an

(*w*) Case of *Dyer v. Dyer*, in *Scacc.* Nov. 1788. *post.* p. [216].

(*x*) Case of *Goodright d. Langfield v. Hodges*, in *B. R.* on a special verdict, *post.* p. [227]. And see 1 *Atk.* 385. *Taylor v. Taylor*. [Custom for a nominee of a copyhold in reversion to take beneficially, unless a trust is mentioned on the rolls of the manor, held to be reasonable, inasmuch as it tends to prevent disputes as to secret trusts. 3 *Madd.* 237. *Edwards v. Fidel.*]

* Son. See *Cas. T. Finch*, 338. *Lord Grey v. Lady Grey & al.* Son already fully advanced, considered as a stranger, as the moral obligation ceased on being satisfied or complied with. *Finch*, 341.

† Grandchildren, see *ante* [136] and 2 *Fonbl. on Eq.* 122-3. and *Saund. Uses*, 242-3. *Comyns's Digest*, 247. *Chanc.* (4 *W. 4.*) 2 *Cases in Chanc.* 26. *Ebrard v. Dancer*.

advancement or provision for them (*y*): but such obligation, though it shall extend to a wife *, cannot extend to a nephew or niece (*z*).

(*y*) *Dyer v. Dyer*.—And Mr. *Fearne* was of opinion that such presumption would extend to *natural* children. *Posthum. Works*, 327. *Sed quære*, and *vid. ante*, p. [138]. [Under a grant by copy of court roll of a reversionary estate to *A.* (who had before a life interest in the premises,) *habendum*,—to him for the lives of *B.* & *C.* his grandsons, and for and during the life of either of them longest living successively, according to the custom, &c. immediately after the death, &c. or sooner determination of the estate of the said *A.* and reserving a heriot and 6s. rent; held that *A.* only took the legal estate in reversion, and not the *ceatuy que vies*, there being no custom to enable them to take; although they were expressly stated in the copy to be admitted tenants in reversion. *Right d. Dean and Chapter of Wells v. Bawden*. 3 *East*, 260.]

* See 2 *Vern.* 120. *Back v. Andrews*. *Proc. in Chanc.* 1. S. C. and see also *Supplement to Co. Copyh.* 2. 10. *Tr.* 175. To wife and a stranger successive:—Advancement for wife, but the stranger shall be only a trustee. *Back and Andrews*, and *Kingdom v. Bridges*. 2 *Vern.* 67. *Benger v. Drew*. 1 *P. Wms.* 780. And see 1 *Freem.* 33.

(*z*) *Goodright d. Langfield v. Hodges*, *post.* p. [227]. Advancement good against creditors. *Kingdom v. Bridges*, and *post.* [224]. and *Back v. Andrews*. An ad-

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And as the doctrine relative to trusts of this kind, appears settled on very rational grounds, by the cases of *Dyer & Dyer*, and *Goodright d. Langfield v. Hodges*, (in which the former cases were fully considered,) and as they are not yet extant in print, they will be given at large at the end of this chapter.

Equity of redemption.
See vol. 2. p. [62].

If a copyhold be surrendered on condition, by way of mortgage, and the condition be broken, yet the equity of redemption shall follow the descent of the legal estate: thus if the copyhold were in borough English, the equity would go to the youngest

Comyns's
Dig. 247.
Chancery,
(4 W. 4.)
2 *Cas. in*
Chanc. 26.
Ebrand v.
Dancer.

vancement, *if intended at the time*, and no alteration can be made afterwards. 2 *Freem.* 33-4. *Woodman v. Morrell.* And see 2 *Atk.* 74. *Crop v. Norton.* Father sold—yet an advancement. That it was not an advancement must be proved by the other side. 2 *Freem.* 252. *Shales v. Shales.* [A father having purchased in the names of his sons a copyhold estate, which he afterwards demised by license *obtained subsequently to the purchase*, the sons take the estate successively as an advancement. To repel the presumption of advancement, evidence of the father's intention must be *contemporaneous* with the purchase. 1 *Swanst.* 13. *Murless & Ux. v. Franklin.* The presumption arising from the circumstances of the purchase of one estate cannot be qualified by transactions relative to other estates. *Ibid.* 19.]

son : or if it were in gavelkind, to all the sons equally (a).

And it is the same as to resulting trusts : Resulting trust.
as in the case of an undisposed residue ; the portion undisposed of shall result as in freeholds (b).

So the trust of an estate *pour autre vie* of Estate pour autre vie.
copyholds, shall go to the executors or administrators, as if it had been of the freehold estate (c).

But a distinction has been made with respect to trusts executed and executory ; for in the execution of the latter, the court will be guided by the rules of the common law : as in the case of an executory trust for the heirs of the body of a person in gavelkind lands, the court will decree an estate to the

(a) 2 Ves. 304. *Fawcett v. Lowther*, and *ante*, p. [120].

(b) See *ante*, p. [95]. Of Surrenders, and see *Goodright d. Langfield v. Hodges*, *post.* p. [227].

(c) 2 Vern. 264. *Rundle v. Rundle*, and the case of *Goodright d. Langfield v. Hodges*, *post.* And shall pass as *personal* estate by a will, and not under the word “*copyholds*,” (6 Ves. 633. *Watkins v. Lea.*) for the testator has only the equity.

[216] eldest son and the heirs of his body, with remainder to the second son and the heirs of his body, &c. and not according to the custom of gavelkind (*d*). And so also in the case of borough English lands ; the heir at common law shall take the benefit of the executory trust (*e*).

If a trust be created of a copyhold, and the trustee die without heir, so that the lands escheat, the lord shall not be subject to the trust, but shall have the lands discharged of it (*f*).

(*d*) See 1 *Atk.* 607. *Roberts v. Dixwell*.

(*e*) *Starkey v. Starkey*, in *Scacc.* cited 7 *Bac. Abr.* Uses and Trusts, (H) p. 179-80. *Gwillim's* ed. But note, in the cases of *Roberts v. Dixwell*, and *Starkey v. Starkey*, the heirs took by purchase: the parent did not take at all in the latter, and in the former only an equitable estate. See my *Descents*, 223. N.

(*f*) See 1 *Stra.* 454. 1 *Just. Blackst. Rep.* 166-7. *Burgess v. Wheate*, and 3 *Atk.* 77. [And under a devise of a copyhold to *A.* and his heirs, in trust for *B.* and his heirs ; upon the death of *B.* without heirs, it has been held, that the heir of the trustee has no equity to compel the lord to admit him. 3 *Ves.* 752. *Williams v. Ld. Lonsdale*.]

Case of DYER v. DYER, in Scacc.

IN 1737, certain copyhold premises, holden of the manor of Heytesbury, in the county of Wilts, were granted by the lord according to the custom of that manor, to *Symon Dyer*, (the plaintiff's father,) and *Mary* his wife, and the defendant *William* (his other son), to take in succession for their lives, and to the longest liver of them. The purchase money was paid by *Symon Dyer* the father; he survived his wife, and lived until 1785, and then died, having made his will, and thereby devised all his interest in the copyhold premises (among others) to the plaintiff, his youngest son.

See 1 *P. Wms.*
5th ed. p. 113.
in *Not. Before*
Lord Chief
Baron *Eyre*,
Baron *Hotham*
and Baron
Thompson,
Nov. 20, 21.
and 27, 1788.

[217]

The present bill stated these circumstances, and insisted that the whole purchase money being paid by the father, although by the form of the grant the wife and the defendant had the legal interest in the premises for their lives, in succession, yet in a court of equity, these were but trustees for the father: and the bill, therefore, prayed that the plaintiff, as devisee of the father, might be quieted in the possession of the premises during the life of the defendant.

The defendant insisted that the insertion of his name in the grant operated as an advancement to him from his father to the extent of the legal interest thereby given him. And this was the whole question in the case.

The *Lord Chief Baron*, after directing the cause to stand over for a few days, delivered the judgment of the court as follows.

[218] “ The question between the parties in this cause is, whether the defendant is to be considered as a trustee for his father in respect of his succession to the legal interest of the copyhold premises in question? And whether the plaintiff, as representative of the father, is now entitled to the benefit of that trust. I intimated my opinion of the question on the hearing of the cause; and I then, indeed, entertained very little doubt upon the rule of a court of equity, as applied to this subject; but as so many cases have been cited, some of which are not in print, we thought it convenient to take an opportunity of looking more fully into them in order that the ground of our decision may be put in as clear a light as

possible ; especially in a case in which so great a difference of opinion seems to have prevailed at the bar. And I have met with a case in addition to those cited, which is that of *Rumbold v. Rumbold*, on 20th April, 1761. The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold ; whether taken in the names of the purchaser and others jointly, or in the names of others without that of the purchaser ; whether in one name or several ; whether jointly or *successive*, results to the man who advances the purchase money. This is a general position supported by all the cases ; and there is nothing to contradict it ; and it goes on a strict analogy to the rule of the common law, that where a feoffment is made, without a consideration, the use results to the feoffor. It is the established doctrine of a court of equity, that this resulting trust may be rebutted by circumstances in evidence. The cases go one step farther, and prove that the circumstance of one or more of the nominees being a *child* or *children* of the purchaser, is to operate by rebutting the resulting trust ; and it has been determined in so many cases, that the nominee, being a child, it shall have

*Rumbold v.
Rumbold.*

such operation as *a circumstance of evidence*, that we should be disturbing land-marks if we suffered either of those propositions to be called in question, namely, that such circumstance shall rebut the resulting trust, and that it shall do so as a *circumstance of evidence*. I think it would have been a more simple doctrine, if the children had been considered as purchasers for a valuable consideration. Natural love and affection raised an use at common law : surely then it will rebut a trust resulting to the father. This way of considering it would have shut out all the circumstances of evidence which have found their way into many of the cases, and would have prevented some very nice distinctions, and not very easy to be understood. Considering it as a circumstance of evidence, there must be, of course, evidence admitted on the other side. Thus it was resolved into a question of intent : which was getting into a very wide sea, without very certain guides. In the most simple case of all, which is that of a father purchasing in the name of his son, it is said, that this shews that the father *intended an advancement*, and *therefore* the resulting trust is rebutted ; but then a circumstance is added to this, namely, that the son happened to be provided for. Then the question is, did the father intend to advance a

son already provided for? Lord *Nottingham** could not get over this; and he ruled, that in such a case the resulting trust was not rebutted: And in *Pole v. Pole*, in *Vesey*, Lord *Hardwicke* thought so too. As yet the rule in a court of equity, as recognised in other cases, is, that the father is the only judge, as to the quantum of a son's provision: and this distinction, therefore, of a son's being provided for or not, is not very solidly taken or uniformly adhered to. It is then said, that a purchase in the name of a son, is a *prima facie* advancement (and indeed it was difficult to put it in any other way). In some of the cases, some circumstances have appeared which go pretty much against that presumption; as where the father has entered and kept possession, and taken the rents; or where he has surrendered or devised the estate; or where the son has given receipts in the name of the father. The answer given is, that the father took the rents as guardian of his son: now would the court sustain a bill by the son against the father for these rents? I should think it pretty difficult to succeed in such a bill. As to the surrender and devise, it is answered, that these are subsequent acts:

* See *Cas. T. Finch*, 338. (341.) *Lord Grey v. Lady Grey*.

whereas the intention of the father in taking the purchase in the son's name must be proved by the concomitant acts: yet these are pretty strong acts of ownership, and assert the right, and coincide with the possession and enjoyment. As to the son's giving receipts in the name of the father, it is said that the son, being under age, could not give receipts in any other manner. But, I own, this reasoning does not satisfy me. In the more complicated cases, where the life of the son is one of the lives to take in succession, other distinctions are taken. If [221] the custom of the manor be, that the first taker might surrender the whole lease, that shall make the other lessees trustees for him: but this custom operates on the legal estate, and not on the equitable interest: and, therefore, this is not a very solid argument. When the lessees are to take *successivè*, it is said, that, as the father cannot take the whole in his own name, but must insert other names in the lease, then the children shall be trustees for the father; and to be sure, as the circumstance of a child being the nominee is not *decisive* the other way, there is a great deal of weight in this observation. There may be very many prudential reasons for putting in the life of a child

in preference to that of any other person ; and if, in that case, it is to be collected from circumstances whether an advancement was meant, it will be difficult to find such as will support that idea. To be sure, taking the estate in the name of the child, which the father might have taken in his own, affords a strong argument of such an intent ; but where the estate must necessarily be taken to lives in succession the inference is very different. These are the difficulties which occur from considering the purchase in the son's name as a circumstance of evidence only. Now if it were once laid down, that the son was to be taken as a purchaser for a valuable consideration, all these matters of presumption would be avoided.

“ It must be admitted that the case of *Dickinson v. Shaw* is a case very strong to support the present plaintiff's claim. That came on in Chancery on 22d May, 1770. A copyhold was granted to three lives, to take in succession ; the father, son, and daughter. The father paid the fine ; there was no custom stated. The question was, whether the daughter and her husband were trustees during the life of the son, who sur-

[222]

Dickinson
v. Shaw.

vived the father? At the time of the purchase the son was nine, the daughter seven years old. It appeared that the father had leased the premises from three years to three years, to the extent of nine years. On this case, Lords Commissioners *Smythe* and *Aston* were of opinion, that, as the father had paid the purchase money, the children were trustees for him. To the note I have of this case it is added, that this determination was contrary to the general opinion of the bar; and also to a case of *Taylor v. Alston*, in this court. In *Dickinson v. Shaw*, there was some little evidence to assist the idea of its being a trust, namely, that of the leases made by the father. If that made an ingredient in the determination, then that case is not quite in point to the present; but I rather think that the meaning of the court was, that the burthen of proof lay on the child; and that the cases which went the other way, were only those in which the estate was entirely purchased in the name of the children. If so, they certainly were not quite correct in that idea; for there had been cases in which the estates had been taken in the names of the father and son. I have been favoured with a note of *Rum-*

[223]

Rumbold v.
Rumbold.

bold v. Rumbold, before Lord Keeper *Henley*, on 20th *April*, 1761, where a copyhold was taken for three lives in succession, the father and two sons; the father paid the fine; and the custom was, that the first taker might dispose of the whole estate: (and his lordship then stated the case fully.) Now this case does not amount to more than an opinion of Lord Keeper *Henley*; but he agreed with me in considering a child as a purchaser for good consideration of an estate bought by the father in his name; though a trust would result as against a stranger. It has been supposed, that the case of *Taylor v. Alston* in this court, denied the authority of *Dickinson v. Shaw*. That case was held before Lord Chief Baron *Smythe*, myself, and Mr. Baron *Burland*, and was the case of an uncle purchasing in the names of himself and a nephew and niece.—It was decided in favour of the nephew and niece; not under any general idea of their taking as relations, but on the result of much parol evidence which was admitted on both sides; and the equity on the side of the nominees was thought to predominate. Lord *Kenyon* was in that cause; and his argument went solely on the weight of the parol evidence.

*Taylor v.
Alston.*

[224]

Indeed, as far as the circumstance of the first taker's right to surrender, it was a strong case in favour of a trust. However, we determined the other on the parol evidence. That case therefore is not material.

*Bedwell v.
Froome.*

“ Another case has been mentioned which is not in print, and which was thought to be materially applicable to this : that of *Bedwell v. Froome*, before Sir *Thomas Sewell* : but that was materially distinguishable from the present. As far as the general doctrine went, it went against the opinion of the Lords Commissioners. His honor there held, that the copyholds were part of the testator's personal estate ; for that it was not a purchase in the name of the daughter ; she was not to have the legal estate ; it was only a contract to add the daughter's life in a new lease to be granted to the father himself. There could be no question ; and her being a trustee, it was a freehold in him for his daughter's life ; but in the cases on the argument his honor stated the common principles as applied to the present case ; and, indeed, by saying that, as between father and child, the natural *presumption* was, that a provision was meant. The anonymous case in 2 *Freeman*, cor-

responds very much with the doctrine laid down by Sir *Thomas Sewell*; and it observes that an advancement to a child is considered as done for a valuable consideration, not only against the father but against creditors. *Kingdome v. Bridges* is a strong case to this point, that is, the valuable nature of the consideration arising as a provision made for a wife or for a child: for there the question was against creditors. *Kingdome v. Bridges.* 2 Vern. 67.

“ I do not find that there are in point [225] more than three cases which respect copyholds, where the grant is to take successive: *Rundle v. Rundle*, 2 Vern. 264. which was a case perfectly clear. *Benger v. Drew*, 1 P. Wms. 781. where the purchase was partly with the wife's money: and *Smith v. Baker*, 1 Atk. 385. where the general doctrine as applied to strangers was recognised; but the case turned on a question, whether the interest was well devised. Therefore, as far as respects the particular case, *Dickinson v. Shaw* is the only case quite in point: and there the question is, whether that case is to be abided by? With great reverence to the memory of those two judges who decided it, we think that case cannot be fol-

Rundle v. Rundle.
Benger v. Drew.

Smith v. Baker.

Dickinson v. Shaw.

lowed ; that it has not stood the test of time or the opinion of learned men : and Lord *Kenyon* has certainly intimated his opinion against it. On examination of its principles, they seem to rest on too narrow a foundation ; namely, that the inference of a provision being intended did not arise, because the purchase could not have been taken wholly in the name of the purchaser : this we think is not sufficient to turn the presumption against the child. If it is meant to be a trust, the purchaser must shew that intention by a declaration of trust : and we do not think it right to doubt, whether an estate in succession is to be considered as an advancement, when a moiety of an estate in possession certainly would be so. If we

[226] were to enter into all the reasons that might possibly influence the mind of the purchaser, various reasons might perhaps occur in every case, upon which it might be argued that an advancement was not intended. And I own it is not a very prudent conduct of a man just married, to tie up his property for one child, and preclude himself from providing for the rest of his family : but this applies equally in case of a purchase in the name of a child only : yet that case is admitted to be

an advancement; indeed, if any thing, the latter case is rather the strongest; for there it must be confined to *one* child only. We think, therefore, that these reasons partake of too great a degree of refinement, and should not prevail against a rule of property which is so well established as to become a land-mark, and which, whether right or wrong, should be carried throughout.

“ This bill must, therefore, be dismissed; but after stating that the only case in point on the subject is against our present opinion, it certainly will be proper to dismiss it *without costs**.

* [In *Doe d. Burrough & Ux. v. Reade*, 8 East, 353. note (a). the authority of this case is said to have been recognised by Lord Kenyon, in *Swift d. Farr v. Davis*, B. R. Hil. 39 Geo. 3. where it was held, that where three lives in a copy are to take *successivè*, and a father, who is the sole purchaser, puts in the lives of himself and his two sons, in general the sons shall take beneficially, unless it appear by any concurrent act of the father that he did not so intend it; as in that case, by taking at the same court a license from the lord to himself and his mother, (who had her widowhood right in the copyhold,) to lease for 70 years: in which case, if the father afterwards grant a lease by way of mortgage, pursuant to such

[227]

In the King's
Bench on a
special ver-
dict. See
Loft's Rep.
230,

GOODRIGHT *on the Demise of* LANG- FIELD *v.* HODGES.

THE lord of the manor of *Sutton* in *Somersetshire*, by his steward, granted the reversion of an estate, held by copy of the said manor, and then in the possession of *Elizabeth Baynton*, widow, to her son *William Baynton* and *Silvester Langfield*; *To have and to hold* the same to them for their lives and the life of the longer liver of them, in succession, immediately after the death of

license to lease, and there be a custom in the manor for the first taker to dispose of the estate as against the other lives, such custom may so far operate as to divest the legal estate of the lives in reversion, and give it to the lessee. Or if there were any doubt of that, or if the license of the lord might be construed to extend only to the first taker of the new copy *jointly* with his mother, and the first taker *alone* executed such license after her death, yet a court of equity (even if the surviving life (the son) were to succeed at law on his strict legal title,) would make the son, the surviving life, convey to his father's lessee, and pay all the costs at law and in equity. —But the presumption of advancement will not be repelled by evidence of the father's intention to the contrary, unless such evidence be *contemporaneous with the purchase*. See 1 *Swanst.* 13. *Murless & Ux. v. Franklin & supr.* p. [214] n. (x).]

Elizabeth Baynton.—*William Baynton* paid the fine, and held during his life. Upon his death, *Hodges*, his next of kin and administrator, entered; upon whom the lessor of the plaintiff entered.

This cause was argued at the county assizes before Mr. Justice *Ashurst*. On the part of the plaintiff *parol* evidence was offered to prove that it was the lessee *William Baynton's* intent, at the time of taking the lease, that after his decease the estate should go to *Langfield*. But Mr. Justice *Ashurst* objected to the competency of the evidence; and thereupon the jury found their verdict, subject to the opinion of the Court of King's Bench.

Lord *Mansfield* delivered the opinion of the court :

“ The question is, whether it should be deemed a resulting trust for *William Baynton*. This may be divided into two points : Whether the evidence ought be received ; and whether, if received, it is sufficient to rebut the resulting trust.

[228]

“ As to the first ; it is always presumed

by the court, that whoever pays the fine takes for his own use and benefit, and does not mean to serve the others, who are mere nominees, to give him as large an estate as by the rules of the manor he can have; and as his personal estate is diminished by the payment of the fine-money, his personal representative (c) is entitled to the advantage resulting from thence. The cases are contradictory; perhaps inaccurately reported. But I can remember, that in *November*, 1752, *A.* having renewed, by adding two new lives who were directed to take in succession, they claimed; but the court decreed it to be a resulting trust for his personal representative. Otherwise in the case of a son, where the father's renewal is supposed to be for his advancement (d). This distinction is not within the statute of frauds, because it arises by implication of law. Yet, though it arises by implication of law, it may be rebutted; and it is certain that

[229] parol evidence may always rebut an equitable presumption. See 1 *Vern.* 366. *A.* pur-

(c) *Rundle v. Rundle*, ante, p. [215].

(d) *Dyer v. Dyer*, ante, p. [216].

chased in *B.*'s name, and it was admitted by the Master of the Rolls, that he might be permitted to prove that he purchased for his own use and benefit, and so raise a resulting trust for himself, but that the proofs must be strong; which not being the case, *A.* was nonsuited. *Secondly*, here they are as strong as possible. It must first be remarked, that *Baynton* had himself permitted the legal estate to be in his nephew after his death; the parol evidence makes it most clear that he did so intentionally. The first witness deposed, that *Baynton* always said that he intended it for *Langfield* after his death, as soon as it came to hand; that he would give it to *Langfield*; and that he had purchased it for *Langfield*. The second witness deposed, that he said, he intended it for *Langfield*; that after Mrs. *Baynton*'s death it was to be *Langfield*'s; that such was his constant discourse from the time of his purchase to the time of his death. The evidence, therefore, is full for the plaintiff, and is admissible evidence.

“ Therefore let the *postea* be delivered to the plaintiff.”

By *Mansfield*, *Aston* and *Willes*.

CHAP. VI.

OF ADMISSION *.

[230]
Introduction.

No one could
be placed in
the tenancy
without the
consent of
the lord.

The lord took
possession
when the
tenancy was
vacant.

WE have already seen that as the kingdom was divided into manors, so each manor was subdivided into inferior tenancies. Each tenement was holden of the immediate lord, and regarded as his gift. Hence no person could be placed in his tenancy without his consent.

As the several tenements were granted in consideration of certain returns and services, the lord resumed the possession whenever there ceased to be a tenant to perform them. On the death of a tenant, therefore, the lands returned to the lord, and became the subject of a new grant.

* Admission necessary as to customary freeholds. See 5 *Burr.* 2766, &c. and 2785. *Vaughan d. Atkins v. Atkins.*

In after times, when the grant was extended to the heirs of the tenant, the renewal became a matter of right. But still, on the death of the ancestor, the lord was entitled to enter and resume the possession.

The heir might be at a distance, or unable to assert his claim. Besides, it would frequently happen, that the succession was the object of dispute. In each case the lord was entitled to the possession of the lands. If a claimant appeared, the lord had a right to be satisfied that his title was legitimate; and that there was an actual tenant to perform the services and to render the returns. If none appeared, none had a right but himself; and as the consideration of his gift had failed, he was justified in resuming the lands.

Proclamation
for the claim-
ant to be
admitted.

[231]

When a tenant therefore died, proclamation was made in the court of the manor for the heir to make his claim. If he did not appear at the third proclamation (which, according to the feudal law, was to be made within a certain number of days (*h*),) the

(*h*) See *Wright's Ten.* 197. N. (*k*). *Watk. N. c. to Gild. Ten.* 442.

lord took the possession. If the heir afterwards appeared within the year*, the possession was restored to him ; if he did not, he lost his feud.

Entry without
proclamation.

Relief.

By the laws of *England*, however, the heir of a freeholder was enabled, from very ancient days (*i*), to enter on the lands without this formal process ; and only payed his relief to the lord. Which relief, as to the tenant in socage, was, by a law of *William* the Conqueror (*k*), fixed at a year's rent, and, in fact, seems to have been no more than accounting to the lord for the profits of that

* See *Plowd.* 372. 1 *Show.* 86.

(*i*) *Ll. Hen.* 2. cap. 70. See *Seld. Jan. Angl.* b. 2. c. 17.

(*k*) *Ll. Gul.* cap. 40. *Seld. Eadm. Spicil. & Kelh. Norm. Dict.* Dicitur autem rationabile relevium - - - de socagio - - - quantum valet census illius socagii per unum annum. *Glanv. lib.* 9. cap. 4. f. 144. See also *Glanv. lib.* 7. cap. 9. and *stat. Marl.* 52 *Hen.* 3. cap. 16. In some manors the relief is only half a year's rent ; as (with respect to gavelkind freeholds) in several *dens* within the manor of *Glassenbury*, in *Kent*. (From original minutes of the rolls. C. W.)

year, for which he might, under certain circumstances, have retained the lands (*l*). [232]

With respect, however, to lands held immediately of the king, the ancient rules were rigorously preserved. The heir could not enter without suing his livery. And though such livery was sued out immediately, yet the king was entitled to the year's profits (*m*). *Primer seisin.*

In *Scotland*, to this day, the heir has the seisin given him of whomever he holds (*n*).

And, with respect to copyholds, the ceremonies of the feudal times must yet be observed. As the copyholder held only at will, the tenancy must necessarily have ceased on his death : however, if the copyholder has an estate to himself and his heirs, the lord cannot defeat the claim. *Admission of the heir of a copyholder.*

When a copyholder, therefore, dies, his *Presentment of the ancestor's death.*

(*l*) See *Watk. N. i. to Gilb. Ten.*

(*m*) See 2 *Bl. Com.* 66. ch. 5.

(*n*) See *Dalrymp. F. P. c.* 6. s. 3. p. 245, &c

death is presented by the homage at the next court ; and proclamation is made for the heir to claim. Which presentment and proclamation are thus recorded :

Entry of
presentment.

[233]

“ ALSO AT THIS COURT the said homage presented, that, since the last court, *A. B.* of &c. died seised of all that messuage, &c. which he held to him and his heirs, by copy of court roll, at the will of the lord, according to the custom of this manor : *Whereupon* there happened to the lord for an heriot, &c. *And the said homage further presented*, That *B. B.* was the only son and customary heir of the said *A. B.*

—of procla-
mation where
the heir is
known.

“ WHEREUPON proclamation was duly made at the same court, for the said *B. B.* to come in and be admitted to the said messuage, &c. as his right and inheritance ; as in such cases is used and accustomed within the manor aforesaid.”

If the heir be not known, it must be so presented ; thus,

Presentment.

“ But who is the next heir to the pre-

mises aforesaid, is to the said homage not known."

And the proclamation will then run :

" For any person or persons having right to the said premises, to claim the same, and be admitted thereto."

and proclama-
tion where
the heir is not
known.

If the heir does not appear on proclamation,
his default is recorded :

" WHEREUPON the first proclamation was duly made at the same court for the said *B. B.* to come in and be admitted, &c. But he came not : wherefore his default was recorded ; and the second proclamation will be made at the next court."

Default of
appearance
recorded.

[234]

At the next court make further proclamation ; and enter it,

" Also at this court the *second* proclamation was made, &c."

Further pro-
clamations.

If no one comes on the *third* proclamation, Seizure.

A A

Quousque.

See 8 Co.
100. b.

the lord may seize *. But, unless there be a special custom, he can only seize *quousque* (o); or till the claim be made. And even if there be a custom, infants, persons *non compos* or beyond the seas, would not be bound (p).

Provision by
statute in
case of in-
fants and
femes covert.

But, with respect to infants and *femes covert* entitled by descent or by surrender

* If tenant for life will not come in, it will be no forfeiture of the estate in remainder. See *Baspool v. Long*, 1 Roll. Abr. 568. *Customs*, (G) pl. 5. and *Cro. Eliz.* 879. S. O. and *post.* [336].

(o) See 1 Lev. 62. *Earl of Salisbury's case*. 3 Durnf. & East, 164. *Doe d. Tarrant & al. v. Hellicr & al.*

(p) *Gilb. Ten.* 230-1. i. e. they would not be precluded from claiming the premises when the disability should be removed: but the lord may seize *quousque*, and retain the profits till they be actually admitted. See *Sir Rich. Letchford's case*, as cited by Treby, attorney-general, in *Carth.* 42-3. and *Cro. Jac.* 101. *Whitton v. Williams*. *Ibid.* 226. *Underhill v. Kelsey*. *Godb.* 268. *Ca.* 371. 1 *Show.* 88. If the lord seize on the heir not coming in, it seems clear that the heir cannot, after such seizure, enter till he appear and make his claim in court. For the seizure would be useless, could the heir enter without satisfying the lord that he had right.

to the use of a will, it is provided by the statute 9 Geo. I. c. 29, that no forfeiture shall be incurred by reason of their not coming in to be admitted on such proclamations. But that if such *femes covert* or infants do not come in to be admitted in person, or the former by their attornies (which they are thereby empowered to make,) or the latter by their guardians, or, having no guardians, by their attornies (which they may appoint [235] by virtue of that act), at one of the three then next courts, the lord or steward, on due proclamations, &c. may appoint such guardians or attornies for the purpose of admission (*q*).

And, therefore, if one of several co-heirs of a copyholder be a *feme covert* at the time of the ancestor's death, and the lord seize the whole estate (in default of the heirs not coming in to be admitted, after three pro-

(*q*) And see *post*, p. [320]. Note, the stat. is not noticed, except by counsel, in *North v. Earl of Strafford*, 3 P. Wms. 148. though that case was determined in 1732. and there said that an *action* would lie for the fine.

clamations,) without first appointing an attorney for the feme covert, according to the requisites of the statute, 9 *Geo. I. c. 29.* a seizure of the whole estate is irregular ; though it be not known to the lord that one of the heirs is a feme covert (*r*).

Heir within
the realm at
the time of
proclamation ;

If the heir, who is not otherwise privileged, be within the realm at the time of the first proclamation made, and then go beyond the seas, he shall be bound : and, on the other proclamations being duly made, the lord may seize (*s*).

at the time of
the descent.

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And it should seem, that such heir shall be bound, on presentment and proclamations made, if he leave the kingdom after the descent and before the first proclamation ; for the point on which these cases turn is, whether, by intendment of law, the heir could have had notice of the descent, and his obligation to be admitted, or not ? And it seems that the law will intend, that

(*r*) 3 *Durnf. & East*, 162. *Doe d. Tarrant v. Hellier*.

(*s*) 8 *Co.* 100. b.

he had knowledge, if he be within the realm at the time of his ancestor's decease : but if it should be apparent that the heir could not have been informed of such event before his departure, the court would relieve ; as in such case the presumption or intendment of law would be rebutted. And it should seem that the court would be satisfied, even with slight grounds, in order to rebut such presumption ; as forfeitures are not to be favoured, and the inclination would be rather for the benefit of the heir at law (*t*).

Yet, on proclamation being made for the heir to come in, it is not necessary to specify the *particular estates* of which the former tenant died seised, nor, in order to seize, to prove the proclamations *viva voce* (*u*).

Proclamation,
how to be
made.

(*t*) *Watk. N. ci. to Gilb. Ten.* 442. [A person claiming to be admitted as heir to a copyhold, need not tender himself to be admitted at the lord's court, if the steward upon application to him out of court, has refused to admit him. 2 *Maule & Selwyn*, 87. *Doe d. Burrell v. Bellamy & al.*]

(*u*) See 1 *Keb.* 287. *Lord Salisbury's case.* . And 3 *Durnf. & East*, 164. N. (*a*).

Necessary before seizure.

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But it is absolutely necessary, in order to warrant the lord in seizing, that proclamation be made, on the regular presentment : for till presentment and proclamation be actually made, the heir is not obliged to claim (w).

Proclamation for surrenderee to be admitted.

By special custom proclamation may be made for the surrenderee to come in and be admitted ; (though, generally speaking, the surrenderor continuing tenant till the actual admittance of the *cestui quæ use*, the lord, having his tenant, has nothing to do with the surrenderee ;) and, if he come not in after three proclamations, the lord may seize*. Yet if a copyhold be surrendered to a person for life, with remainders over ; and

(w) 1 *Leon.* 100. *Rumney & Eve.* 3 *Ibid.* 221. *Anderson & Hayward.* 4 *Ibid.* 30. S. C.

* See 1 *Show.* 31 & 83. *King v. Dilliston.* *Salk.* 386. *Carth.* 41. *Cro. Eliz.* 879. *Baspool v. Long.* See also *Preced. in Chanc.* 579, where it is said, that the lord has no means to compel the surrenderee to come in to be admitted. But where he can by custom compel the admittance of a surrenderee, a court of equity will not relieve in the case of a surrender by way of mortgage. 2 *Vern.* 367. *Tredway v. Fotherley.*

the particular tenant will not come in, his default shall not prejudice the remaindermen (x).

If, on the third proclamation, no one appears to claim the premises and demand admission, the lord is justified in seizing them, at least *quousque* : and then a warrant is issued to the bailiff of the manor, commanding him to enter on behalf of the lord. The entry of the proceedings is thus made on the roll :

Warrant to seize.

“ ALSO AT THIS COURT the third proclamation was made, &c. but no one came : THEREFORE a precept was issued, directed to the said beadle, commanding him to enter upon the said premises, and seize the same into the hands of the lord until such claim shall be made and sustained ; ” or “ into the hands of the lord,” generally ; as the case may be.

Entry on the roll.

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(x) See 1 Roll. Abr. 568. Custom, (G) pl. 5. *Baspool v. Long*.

Form of the
warrant.

The warrant or precept may be thus (y) :

*Manor of
Fairhurst.* } “ You are hereby commanded
to enter upon all, &c. of which
A. B. lately died seized, and, although due
proclamations have been made, are yet un-
claimed, and to seize the same into the hands
of the lord ; and to make your return to this
precept without delay.”

“ Given under my hand, &c.

“ *C. D.*

“ Steward, &c.

“ To *I. C.* beadle or
bailiff of the manor of
Fairhurst aforesaid *.”

Return,

The bailiff should then endorse the pre-
cept thus :

“ By virtue of the within written precept
to me directed, I have entered upon the

(y) But it should seem from the case of *Trotter*
v. *Blake* (2 *Mod.* 229.) that a written precept is not of
necessity.

* Bailiff cannot use force in seizing. See 3 *Leon.*
99. *Ca.* 142.

premises within mentioned and seized the same into the hands of the lord, as by the [229] said precept I was commanded.

“ *I. C.*
“ Bailiff, &c.”

Then enter the return on the rolls, thus :

“ AND now at this court the said beadle (or bailiff) returned, [or, “ came in his proper person, and said”] that, by virtue of the precept to him directed, he entered into all, &c. and seized the same into the hands of the lord, as by the same precept he was commanded.”

In the cases, however, of grants and surrenders, the person about to be admitted is generally in court, either personally or by attorney ; and, therefore, the formalities of proclamation are avoided, as they are rendered unessential. And the entry of admission on a surrender is thus :

Proclamation not made when the person to be admitted is in court.

“ AND the said *C. D.* being present in court in his own proper person, prayed to be admitted tenant to all and singular the

Entry of the admission.

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said last-mentioned premises, according to the form and effect of the said surrender; To whom the lord of the said manor, by his said steward, granted seisin thereof by the rod: To hold to him the said C. D. and his heirs for ever, by copy of court roll, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services, therefore due and of right accustomed. And he was admitted tenant thereof in form aforesaid; gave to the lord for a fine ———; and made his fealty*.”

Lord compellable to admit.

But, before we consider the several essentials or formalities of an admission, we must remark that, as the lord may compel the heir, and in some cases the surrenderee, to be formally admitted; so the lord also is, in his turn, now compellable to grant admission according to the designation of the surrenderor.

By bill in equity.

When the lord accepted a surrender under confidence to re-grant the copyhold so sur-

* [As to entry on the rolls of the admission of trustees under a deed of settlement, *vid. supra*, p.[191].]

rendered to another person, either expressly named at the time or to be afterwards named in the tenant's will; the Chancery enforced the trust as a matter of conscience, and compelled the lord to admit the surrender (z).

But a more summary and expeditious mode of compulsion is by a *mandamus* at law; which will now lie to compel the admission of the person named (a). By *mandamus*.

(z) See Bro. Ten. p. Copie. pl. 10. 4 Co. 24. a. Cra. Jac. 368. Ford & Haskins. 4 Burr. 1961. 2 Bl. Com. 366. ch. 22. [See also 3 Ves. 752. Williams v. Ld. Lonsdale.]

(a) 2 Durnf. & East, 197. the King v. Remett. And *ibid.* 484. The King v. the Lord of the manor of Hendon, &c. 4 Burr. 1961. And see 5 Burr. 2787. Lord compellable by *mandamus* or decree, to admit. Per Lord Mansfield. See also 2 Ves. 396. Lord Montague v. Duiman; where the chancellor said, that the court had no power to grant an injunction to stay proceedings on a *mandamus*. The cases of the King v. Remett, and the King v. the Lord of the Manor of Hendon, have indeed been controverted. 3 Ves. 752. But see 5 East, 58. Roe d. Conolly v. Vernon & al. and 7 *ibid.* 521. The King v. Marq. of Stafford & al.

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Action.

It is said also, in some books, that if a surrender be made, and the lord refuse to admit the surrenderee, the surrenderor may maintain an action against the lord in consequence of such refusal (*b*): though it has often been adjudged that such an action could not have been supported by the surrenderee (*c*).

In what cases
the lord is
compellable.

But when we assert that the lord is compellable to admit the surrenderee, it must be understood with many qualifications. Though the lord shall not be permitted to

[See also 6 *East*, 431. *The King v. Coggan & al.* where a *mandamus* was directed to the lord and steward of a manor to admit one to a copyhold tenement who had a *prima facie* legal title, in order to enable him to try his right, though equity had before refused to compel the lord to admit him for want of his shewing an equitable right to the property. If, however, there be a claim of a previous fine due to the lord, in respect of the ancestor from whom the party claims, the rule will be granted only on payment of such fine or fines as shall be due. *Ibid.*]

(*b*) *Lex Custum.* 162. ch. 17. cites *Gallaway's case*, as so adjudged; and 3 *Bulst.* 217. cites S. C.

(*c*) *Gallaway's case*, *ubi sup.* *Cro. Jac.* 368. *Ford v. Hoskins.* *Moore*, 842. S. C.

defeat the right of the surrenderor, with respect to the nomination of his successor in the tenancy, yet, on the other hand, the tenant must not be permitted to prejudice the rights of his lord. Before the tenant can compel an admission, the person appointed, and the estate he is to take, must be such as the surrenderor would be warranted in appointing.

If a copyholder for life, therefore, surren- Tenant for
life.
der to the use of another, for the life of that
other, the lord may refuse to receive such
surrender: or, as the use of the surrender is,
generally, not declared till the surrender is
made, he may refuse to admit the surren-
dere. The old tenant had an estate for *his*
own life, and not for the life of another: he [242]
could have transferred *that* interest, but he
could not have obliged the lord to grant an
interest which might have been of longer
continuance; even though a custom were
alleged to support it (*d*).

So, if a copyholder in fee surrender to the Corporation,
&c.

(*d*) *Watk.* No. cxix. to *Gillb. Ten.* 451.

use of a corporation, either aggregate or sole, which is enabled by statute or licence to hold lands, it might well be questioned whether an admission could be compelled. For, in the first place, it does not indeed appear how a corporation of either kind can be a copyhold or customary tenant, or discharge the services, as suit of court, &c. (e). And in the next place, as a corporation is immortal, the fines, in consequence of death, would be lost. The lord would surely, therefore, be justified in refusing an admittance so apparently to his prejudice. In cases, therefore, in which the persons intended to be benefited are corporate, the premises should be surrendered to the use of a person who is not under such incapacity and his heirs in trust, for such corporate person (f). But as a trust is within the mortmain acts, *the licence of the king* should be obtained.

Termor.

In the case of the Earl of *Bath* against

(e) See *Bro. Fealty*, pl. 15. *Co. Litt.* 66. b. 2 *Lord Raym.* 864. in *Tonkin v. Croker*.

(f) See *ante*, ch. 5. p. [213].

Abney, it was said, by the counsel for the plaintiff, according to the report of that case in *Burrow* (*f*), that, "though a lord may grant a copyhold for a term of years, yet the lord is not obliged to *admit* for a term of years." [243]

But, though this is merely the assertion of the counsel at the bar in argument, without being urged on any apparent principle of law or reason, and, consequently, entitled to little credit, yet, as it might possibly mislead, it may be necessary to remark that such assertion is absolutely contradictory not only to indisputable authority but to constant usage (*g*). If a surrender be made to the use of a person for years, or, which is the same thing in effect, if a surrender be made to the use of a will, and the testator devise to a person for years, the lord would most certainly be compellable to admit him, equally as if he had taken for life. The no-

(*f*) p. 217.

(*g*) See 4 Co. 23. a. Co. Copyh. s. 47. Tr. p. 110. And see the Earl of Bath & Abney : *Hauchett's* case in *Dyer*, 251. a. &c. &c. *Batmore & Graves*. 1 Vent. 260, &c.

minee or devisee for years, would indisputably become tenant to the lord, as to the portion of copyhold interest appointed him*. The lord, therefore, might insist upon his coming in to be admitted. And by consequence, the surrenderee for years may insist, in his turn, on an admittance, if refused. A termor for years *by licence* could need no admittance, as he would not become tenant *to the lord*.

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Heir at law.

As the admission of an *heir at law* is only for the benefit of the lord, the court will not grant a *mandamus* to compel such admission, by reason of its inutility: as the heir has as good a title without admittance as with it, against all the world but the lord (*h*). "It is a matter only between the lord and tenant" (*i*): and if the lord refuse admission, he is tenant as to others without it; and the lord shall not be suffered to take any advantage of his own neglect.

* See *Hob.* 177. *Swinerton v. Miller. Bull. N. P.* 107.

(*h*) 2 *Durnf. & East*, 197. *The King v. Rennett*.

(*i*) *Cowp.* 741. *Knight v. Bate*.

On the death of his ancestor, the heir may enter and take the profits (*k*), and maintain an action for any trespass done to his possession (*l*). He may also make a lease of the copyhold as warranted by custom; and on such lease an ejectment may be brought (*m*).

What the heir may do before admission.

If he die after entry and before admittance, there shall be a *possessio fratris* (*n*): and his heir may enter also, as he himself could have done (*o*). His widow shall be

(*k*) 4 Co. 22 b. *Brown's case*. *Ibid.* 23. b. *Clarke & Pennyfather*. A. supposing himself entitled, was admitted, and then surrendered. Afterwards the lands descended on him. His previous surrender no estoppel, 1 Anstr. 11. *Morse v. Faulkener & al.* and 3 Durnf. & East, 365. S. C.

(*l*) 4 Co. 23. b.

(*m*) 1 Leon. 100. *Rummey & Eves*. Moore, 596. *Bullock & Dibley*. Cro. Jac. 403. *Frostwell & Welch*. 3 Durnf. & East, 169. and see 1 Roll. Abr. 502. Copyh. (M.) pl. 1.

(*n*) *Dyer*, 291, pl. 69; for it is the entry, and not the admittance, which makes the *possessio fratris* of copyholds. See 1 Freem. 45. *Foze v. Smith*, and *Watk. on Desc.* 51-2. 63. n.

(*o*) 4 Co. 23. b. *Clarke & Pennyfather*.

[245] endowed (*p*) ; and the husband of an heiress shall have his curtesy (*q*).

The heir may even surrender to the use of another, on satisfying the lord for his fine(*s*) ; whether the inheritance be in possession or only in remainder or reversion (*t*) ; and if he would devise his interest he must surrender to the use of his will (*u*).

(*p*) See *Gilb. Ten.* 287-8. and *Watk. on Descents*, [1st edit.] 53-4. in *Not.* and the books there cited : [viz. *Moore*, 272. *pl.* 425. & 597. *pl.* 813. *Lex Custum.* ch. 6. p. 54. ch. 9. p. 67. ch. 17. p. 157. 6 *Vin. Copyh.* (H. e.) 209. and see *Dyer*, 291-2. *pl.* 69. & *Calth.* 60. also *Hob.* 181. 1 *Bac. Abr. Copyh.* (E) & (G). 1 *Espin. N. P.* 146. cites *Hutt.* 18.]

(*q*) See *Gilb. & Watk. on Desc. ubi sup.* and the books there cited. [See also 10 *East*, 583. *Doe d. Milner v. Brightwen.*]

(*s*) 4 *Co.* 22. b. *Brown's case*, and *ante*, p. [59]. [102]. and see *Dalrymple, F. P.* ch. 6. s. 3. p. 252-3. 1 *Anstruther*, 13. *Morse v. Faulkener et al.*

(*t*) *Cro. Jac.* 31. *Auncelme v. Auncelme*, *Cro. Eliz.* 662. *Colchin v. Colchin.* 1 *Roll. Abr. Copyh.* 499. (E) *pl.* 1. S. C. But note,—*Auncelme & Auncelme*, only goes to the surrenderee in remainder, and not to his heir.

(*u*) *Strange*, 487. *Smith & Triggs*, and *ante*, p. [102]. [But by st. 55 *Geo.* 3. c. 192. a devise of copyholds is now made valid without a surrender to the use of the will.]

If there be a custom to surrender into the hands of a tenant, a surrender into the hands of the heir before admittance would be good (*w*).

But, though the heir before admittance may maintain an action in the common-law courts, as an action of trespass or ejectment, yet he cannot sue in the court of the manor: and therefore, he shall not have a plaint in the nature of an assize (*x*). So he cannot sit on the homage (*y*): though it is said, that the lord may avow upon him before he be admitted (*x*). But it should seem, that this can only be where the delay of ad-

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(*w*) See 1 *Keb.* 25. *Muniface and Baker*, and *ante*, p. [78].

(*s*) *Co. Copyh.* s. 41. *Tr.* 94. *Gilb. Ten.* 287. *Kitch.* 60. *a.* and *b.*

(*y*) *Kitch.* 87. *b.* *Co. Copyh.* s. 41. *Tr.* 94. But it should seem, that the swearing of the heir on the homage, being a solemn act in court in the presence of the lord or steward, would be tantamount to a positive admittance. See *Watt. Gilb.* 287. N. (*y*). and see also 4 *Burr.* 1955. in *Roe d. Noden v. Griffiths & al.* Arg.

(*z*) *Kitch. & Co. Copyh.* *ubi sup.* Sed vide *Moore*, 272. Alderman *Dixey's* case cited there, and *post.* p. [247].

mission is occasioned by the heir ; as if the lord make proclamation for him to come in and be admitted, and the heir does not do so before the third proclamation be made : here the law, perhaps, would permit the lord to avow on him by reason of the length of time now usual between the death of the ancestor and the third proclamation, as courts, at this day, are so seldom held ; and the lord manifests his intention to admit him when he shall come and request it. But if the delay be occasioned by the lord, the avowing on the heir for rents or services, would, I conceive, be tantamount to an admission in itself ; as it would certainly be acknowledging him as tenant. In the

[247] former case, the law would not, perhaps, suffer the heir to avail himself of the avowal as an admittance, when it was the effect of his own neglect or refusal ; yet, even in that case, there would be field for doubt, as the lord might have held his court oftener if he pleased (*a*).

Wherever any becomes entitled to the

(*a*) *Walk. N. cxxxv. to Gilb. Ten. 459.*

copyhold, by act of law, as an executor (*b*) a widow taking freebench, in cases in which no assigment is requisite (*c*); an husband in right of marriage (*d*), or by the curtesy (*e*); such person may enter, &c. as an heir at law might have done. Other person taking by act of law.

And the true distinction with respect to the heir or other person so taking by act of law, seems to be, as noticed by *Fenner* in the case of *Ever* and *Aston* (*f*), that, before admittance, the lord himself cannot claim any duty or service, as fealty, homage, relief, rent, or suit; but that this delay of admission shall not prejudice a third person. If the lord accept fealty, &c. from the heir, &c. it would be an implied admittance; but

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(*b*) See *Dyer*, 251. *Hauchett's case*.

(*c*) See *Watk. on Desc.* 53-4. notes. *Gilb. Ten.* 287-8. and notes; and *Watk. No. xxv. to Gilb.* 373.

(*d*) *Hauchett's case*, *ubi sup.* *Co. Copyh.* s. 56. *Tr.* p. 129. *Gilb. Ten.* 291. and *Watk. N. cxxxix.* p. 461.

(*e*) See *Watk. on Desc.* [1st ed.] 53-4, notes; and the books there cited: [and *supr.* p. [245]. note (*p*). See also 10 *East*, 583. *Doe d. Milner v. Brightwen.*]

(*f*) *Moore*, 272. This distinction was said to have been taken in the case of Alderman *Dixey & al.* 23 *Eliz.* in *C. B.*

whether the heir, &c. has been admitted or not, is relative only to the lord, and into which strangers have no necessity to inquire (*g*).

Surrenderee.

But with respect to a surrenderee, who takes by the act of the party, the matter is wholly different. *He* is not tenant to any purpose before admission; he cannot even enter on the premises. The surrenderor continues tenant to the lord.—But we have already spoken on this subject in the chapter on surrenders (*h*).

Having thus seen what may, and what may not be done, before admittance, we come now to the consideration of the admittance itself.

Admittance defined.

“An admittance,” therefore, “is the lord’s acceptance of a person into the tenancy.”

It is the acceptance of a tenant.

And, first, it is an acceptance by “*the lord* :” for, as we have already observed, a

(*g*) See *ante*, p. [244].

(*h*) *Ante*, p. [100]. &c.

person could not be put into the tenancy without his consent (i): a copyholder, especially, who once actually held, and is still regarded as holding, his tenement at the will of the lord, could not, by the terms, become the lord's tenant, independently of that will. [249]
The will of the lord is now, indeed, dwindled into form; but, as a form, it is still indispensable.

Yet the acceptance need not be a personal acceptance by the lord; the lord may accept him by his steward, or by the deputy of his steward.

But the admission of a copyholder differed essentially in one point from the ancient admission of a free tenant: for admission was once equally requisite with respect to the latter as the former. The free tenant could only have been admitted in the presence of, and with the consent, of his peers. Each frank-tenant, as *West* remarks (k), had

Need not be
coram paribus.

(i) *Ante*, p. [230]. and see *Watk. Introd. on the Feudal Syst. Pref. to Gilb. Ten.* and notes.

(k) *On the Creation of Peers*, 63.

originally a negative on every person who was proposed by the lord to be admitted. But this did not hold as to copyhold tenants. The copyholder, if not properly a villein, was removed but little from that order of men, and was, at least, but a tenant strictly at will: he was not to be judged by his fellow tenants, as the freeholder was; the lord or his steward was the judge of his court; or, if he was amenable to a superior one, he was to be tried by freemen; as copyholders could not form a jury at common law. The presentment of his fellows was not essential to give power to the lord to resume his tenement; he might have seized it at his pleasure, whenever he chose to permit him no longer to hold. From hence, then, it must appear, that the same reasons did not apply to the copyhold tenant as to the free, with respect to the admission of a new person into the tenancy. Hence the lord or his steward* may admit, as well out of court as in; since the approbation, or even the testimony, of the former tenants is not requisite. It were indeed most egre-

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* *Kich. 82. b.*

giously absurd, to suppose the concurrence of others to be necessary, where the estates, equally of themselves as of the person about to be admitted, were absolutely dependant upon the will of the lord, not only as to their origin, but also as to their duration and extent.

The admission, however, of the new tenant out of court, should regularly be notified by the lord or his steward, at the next court-day, for the information of the tenants. This too was more immediately necessary in ancient days: as, in case the tenants should have known any objections to the person so admitted, of which the lord might have been ignorant, they might have informed him of them, from which he might have been induced to resume the estate, as having conferred it on a person who was unworthy of the grant. Add to this, that it must be regularly inserted on the court rolls of the manor; by a copy of which he is to hold (1).

But should be notified at the next court.

If the admittance be by the lord or steward out of court, a memorandum of such

[251]
Memorandum
of an admittance made out of court.

(1) *Watk. N. cxi. to Gilb. Ten. 448-9.*

ADMISSION.

admittance should be made to the following effect :

Manor of Fairhurst. } “ BE IT REMEMBERED, that
on this the ——— day of ———
18—, &c. *W. H.* of, &c. came in his proper
person before me *E. M.* lord (or “ steward ”
as the case may be) of the manor of *Fairhurst*
aforesaid, and prayed to be admitted to all,
&c. *To whom* I, the said *E. M.* as lord of
the said manor, personally granted seisin
thereof by the rod : (or, “ To whom the lord
of the said manor, by me his said steward,
granted, &c.”) To HOLD to him the said
W. H. and his heirs for ever, by copy of
court roll, at the will of the lord or lords
for the time being, (*or if the admittance be
by the steward, say, in the common form,* “ at
the will of the lord,”) according to the cus-
tom of the said manor ; by the rents, duties,
&c. *And* he was admitted tenant thereof
 (“ by me the said lord,”) in form aforesaid ;
and gave for his fine ——— : but his fealty
was respited.”

E. M.

Lord (or steward) &c.

At the next court this memorandum should be produced and enrolled :

“ ALSO AT THIS COURT it was certified by the said steward, that, out of court, and since the last court, *W. H.* of, &c. was admitted by the personal acceptance of the lord of this manor, (or “ of him the said steward,”) to all, &c. which said premises had been before duly surrendered to the use of the said *W. H.* &c. (or “ had descended to him the said *W. H.* as the customary heir of, &c.”) Of which admittance a memorandum was made, and signed by the said lord, (or “ steward”) and now produced and read in court, in the words following, that is to say;

Entry on the rolls.

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Manor of Fairhurst. } BE IT REMEMBERED, &c.

As the presence, therefore, of the tenants is not necessary on the admission of a copyholder, the lord (*m*) or steward (*n*), may admit out of court as well as in.

Admission out of court and by whom it may be.

(*m*) 4 Co. 26. b.

(*n*) Kitch. 82. b. 1 Roll. Abr. 505. Copyh. (V) pl. 4.

It is said, indeed (*o*), that an under-steward cannot admit out of court: but it is repeatedly laid down in our books (*p*) that a deputy may, when properly constituted, “do any act which his principal might have done; and that less power he cannot have (*q*).”

[253] There does not appear any good reason then, why there should be a particular exception with respect to *admitting* a copyholder (*r*), as it is merely a ministerial act.

Out of the
manor.

Now wherever an admission would be good out of court, it seems to follow, as a necessary consequence, that such admission would be good out of the manor (*s*). And it is acknowledged that the lord himself may admit out of the manor (*t*): and though it is said that a steward cannot do so; yet most

(*o*) *Bro. Court Bar. pl. 22. Ten. per Copie. pl. 26. Co. Copyh. s. 46. p. 107. Kitch. 82. b.*

(*p*) 1 *Lord Raym.* 659. *Parker & Kett.* 1 *Salk.* 95. S. C.

(*q*) See 1 *Lord Raym. & Salk. ubi supr.*

(*r*) See *Co. Copyh. s. 46. Tr. p. 107.*

(*s*) See 1 *Salk.* 184. *Dudfield & Andrews, and Watk.* No. cxi. to *Gilb. Ten.* 448.

(*t*) 4 *Co.* 26. *b. Melwiche's case.*

of the cases evidently suppose such admission to have been at *a court* held out of the manor (*u*). Now it is clear that *a court* cannot be held out of the manor, unless it be by special custom *, as where a court is held in one manor for a whole honor in which there are several manors (*x*): and, therefore, this reasoning does not apply to *an admittance*,

(*u*) 4 Co. 26. b. 27. a. *Clifton v. Molineaux*.

* If a man, having two manors, would willingly have the tenants of both to do suit and service to one court, this is but lost labour in the lord to practice any such union: for, notwithstanding this union, they will be still two in nature, howsoever the lord covet to make them one in name: *and the one manor hath no warrant to call the tenants to the other manor*, but every act done in the one to punish the offenders in the other, is traversable. Yet, if the tenants will voluntarily submit themselves to such an innovation, and the same be continued without contradiction, time may make this union perfect, and of two distinct manors in nature make one in name and use. And such manors peradventure there are thus united by the consent of the tenants and continuance of time, but the lord's power of itself is not sufficient to make any such union, *causa qua supra*. But if one manor holdeth of another *by way of escheat*, these two manors may be united together, *fortior enim est dispositio legis quam hominis*. Co. Copyh. 2. 31. Tr. 47-8.

(*x*) Cro. Car. 367. *Seagood v. Hone*, Co. Litt. 58. a.

[254]

merely as an admittance, as an admittance may most certainly be *out of court*. And as to the case of *Tukeley v. Hawkins* (y), so far as it relates to this point, it seems to be completely answered by the reasoning in that of *Dudfield v. Andrews* (z), which appears to apply as strongly to an admission as to a surrender.

Who may
admit.

We will now proceed to inquire—Who may be such lord, steward, or under-steward, as may admit a copyholder?

Lord

And here a distinction is frequently made, with respect to the lord, between an admission on a grant and on a descent or surrender. But, in the first instance, the incapacity goes rather to the power of *granting* than of *admitting*: for if the lord has power to grant, he certainly has power to admit. If the grant be invalid, the admission on such grant would be of no avail. Besides: admission is generally made at the time of the grant by the lord who grants; and if it be not actually and formally made, the grant itself would be sufficient to warrant the grantee to enter; as the very act of making

(y) 1 *Lord Raym.* 76.

(z) 1 *Salk.* 184.

the grant necessarily supposes the acceptance of him as a tenant*.

In the case of descents and surrenders, the lord, the steward, or under-steward, are merely instruments : They are compellable to admit if ostensibly such ; and the tenant is not to inquire into the legality of their title.

[255]

If a person therefore be lord *de facto* it is Lord *de facto*. enough : For whether he be lord by right or

* [Where the lord of a manor granted *A.* the reversion of certain premises then in his tenure, to hold to *B.* for his life, immediately after the death of *A.* : held that *B.* might on the death of *A.* maintain an ejectment, although he had never been admitted, he having acquired a perfect legal title by the grant without admittance. *2 Barnew. & Ald. 453. Roe d. Cosh v. Loveless.* And per ABBOTT, C. J. when the lord makes an original grant, no admittance to a copyhold conformable to the custom of the manor seems necessary, except in cases analogous to those where livery of seisin would be requisite in the grant of a freehold. Now a feoffment is not effectual till livery of seisin takes place, but a freehold may be granted in reversion without any livery of seisin, and therefore reasoning by analogy from the grant of a freehold, it seems to me that the grantee of a copyhold in reversion has a good and perfect title by the grant without admittance, and that being so, he may take possession on the death of the tenant for life. *ibid.*]

by wrong, as a disseisor, &c. (*a*) ; whether he be seised in his own right, or in the right of another (*b*) ; whether he have an absolute or defeasible (*c*) title ; whether he be tenant in fee, in tail (*d*), for life, years, at will, or by sufferance (*e*) ; whether he be an infant, or of full age, &c. (*f*) it matters not : His admittances being, in these cases, only ministerial, they will be good, and obligatory on his successors or those having right.

Steward.

So the law is not very curious in examining the imperfections of the steward's person, nor the unlawfulness of his authority ; for be he an infant, or *non compos mentis*, an idiot, or lunatic, an outlaw, or an excommunicate, yet what things soever he performs as incident to his place, can never be avoided for any such disability, because he performs them as a judge, or at least as custom's instrument ; and for his authority,

(*a*) *Co. Litt.* 58. *b.* 1 *Co.* 140. *b.* 4 *Co.* 23. *b.* 24. *a.*

(*b*) See of a Guardian, *Co. Litt.* & 4 *Co. ubi supra.*
& *Godb.* 143. *Ca.* 177.

(*c*) *Co. Litt.* 58. *b.* 4 *Co.* 23 *b.* 24. *a.*

(*d*) 4 *Co.* 23. *b.*

(*e*) 4 *Co.* 23. *b.* 24. *a.* *Co. Litt.* 58. *b.*

(*f*) 4 *Co.* 23. *b.*

though it prove but counterfeit if it come to exact trial, yet if in appearance or outward shew it seems current, that is sufficient. As [256] if I grant the stewardship of my manor of *Dale* by patent, and in the patentee's absence a stranger by my appointment keeps court, this is authentic. If a grant of a stewardship be made to one, and for some fault or defect in the grant it is avoidable, yet courts kept by him before the avoidance shall stand in force ; and whatsoever he did, as steward, is ever unavoidable (*g*).

If such steward be appointed by parol only, his admissions will be equally valid as if he had been appointed by an instrument however solemn ; and even though his appointment be avoided for such cause : As if he be appointed by parol by a corporation ; though a corporation cannot constitute such officer without writing ; And so also if the steward be retained by parol by the king's auditor or receiver (*h*).

So an under-steward may be appointed by Under-steward, &c.

(*g*) *Co. Copyh. s. 45. Tr. p. 104-5. Cro. Eliz. 699. Harris v. Jays.*

(*h*) *Ibid. s. 45. and see Moore, 112.*

parol (*i*) : And such deputy may act either in his own name or in the name of his principal (*k*).

[267]

So an under-steward may authorize another to do a particular act, as to keep a court (*l*). And even if a person was not expressly authorized to do a particular act only, but appointed an under-deputy generally, and so the appointment be absolutely invalid, and, consequently, such person have no true or legal authority at all, yet his admittance would be good (*m*).

So if a chief steward make a deputy and die, though the deputation would necessarily be at an end, since a derivative power cannot exist when its source has ceased, yet the admissions made by the deputy after the death of his principal would be equally valid as if made in his life time (*n*).

(*i*) *Ibid.* s. 46.

(*k*) 1 *Lord Raym.* 658. *Parker & Kett.* 1 *Salk.* 95. S. C.

(*l*) 1 *Leon.* 288. *Lord Dacre's case.* 1 *Lord Raym.* 661-2.

(*m*) See *Parker & Kett.* 1 *Lord Raym.* 1 *Salk. Comyns's Rep.*

(*n*) *Moore*, 112.

But if a stranger, without the appointment of the lord, or consent of the right steward, or without any colour of authority, will, of his own head, come into a manor and keep a court, it seems that a performance of any judicial duty, or the executing of any act whatsoever, will not be warranted, especially if the court be kept without warning given to the bailiff by precept, according to the custom (o).

And as the lord is not obliged to admit the tenant in his own person, so it is not necessary that the tenant be *personally* admitted. The lord, if he pleases, may admit him by attorney (p). Though it is said that he is not *compellable* to admit him by attorney; as a person cannot swear his fealty by another (q). In the case of *femes covert* and infants taking by descent or surrender to a last will he is now *compellable* to admit them by attorney in certain cases, by statute (r). And, as it is now become usual to respite or pardon fealty, such

[258]
Admittance
by attorney.

(o) *Co. Copyh.* s. 44. *Tr.* p. 105.

(p) 9 *Co.* 76. *a.* in *Coombe's case*.

(q) *Ibid.* 2 *Rep. in Chanc.* 56. *Floyer v. Hedingham*.

(r) 9 *Geo.* 1. *cap.* 29.

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Admission
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 Express.

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him with the *possession of the tenements*, and not the acceptance of his person *.

When a copyholder surrenders into the hands of the lord or steward, the surrenderee is expressly received into the tenancy by the lord or steward saying to him, “ I, as lord of this manor,” (or “ I, as steward of this manor, do, for, and in the name of, the lord,”) “ admit you, *A. B.* as tenant to all that, &c. which have been now surrendered into my hands, by *C. D.* to your use: TO HOLD to you and your heirs, by copy of court roll, at the will of the lord, according to the custom of this manor, by the rents, duties, and services, therefore due and of right accustomed; and according to the form and effect of the said surrender; And do put you into the seisin of the same premises by the delivery of this rod.”

Surrenderee.

Manner of admitting.

The new tenant then receives the rod, or other symbol of possession; and pays his fine; and is sworn to fealty, unless his fealty be pardoned or respited.

Seisin and fealty.

* [As to actual admission being necessary or not under an original grant from the lord, see 2 *Barnew. & Ald.* 453. *Roe d. Cosh v. Loveless*, and *supr.* [254].]

[260]
Entry on the
roll.

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Livery of
seisin ;

by the rod or
verge.

Proper and
improper
investiture.

venience, adopted at a very early period. Hence the proper and improper investiture of ancient days. The immediate tenants of the king who held *per baroniam*, were usually *enrobed* before their peers on the occasion. In early times the tenant was obligated to assist his lord with his counsel. The tenants *in capite* formed the court baron of the realm. The dignity of the peerage was attached to their territories; and the tenant received the insignia of his order on receiving the grant of his lands. It was tantamount to the proper seisin as to the fixture of property; it was of equal publicity to his peers; and it supplanted it. And from this circumstance of *enrobing* or *investing* the tenant, came the term of *investiture*. [261]

In other cases, the symbol was generally arbitrary; and often of the most extravagant nature: a sword, a lance, a knife, a glove, the key of a church, and even a drinking-cup, or a lock of the grantor's hair was adopted as the symbol of possession. The rod, staff, or verge, however, was the most common; and which most probably was no other than that borne by the officer

Arbitrary
symbols.

*Coram
paribus.*

[202]

The usual
symbol
should be
observed.

case as to the opinion of the court with respect to the operation of the surrender, or the validity of such a custom; but only that if there could be such a custom, it was not within the jurisdiction of the council, but triable at common law (*x*).

However, there can be no doubt but that if the usual symbol be not used, and a custom requiring that very symbol be good at law, that a court of equity would relieve on a valuable, a moral, or meritorious consideration. Indeed, it would be very imprudent to depart from the accustomed mode; and the particular ceremonies which have been long adhered to, ought not to be capriciously forsaken.

When the tenant is admitted, he usually *Fine.* pays a fine to the lord. But this is no part of the admission, but the consequence of it: nor is it even a consequence of necessity; [263] for the lord may not only remit or waive it, (though such remittance or waivure would,

(*x*) *Cro. Car.* 597. *Aspye v.* ———

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The next thing to be observed on admission is the oath of fealty.

In the days of barbarism and ferocity, when man estimated his right by his power, and regulated his honesty by the length of his sword; when nation supplanted nation in its possessions, and clan invaded clan without compunction or shame; when glory was attached to rapine and desolation, and each mighty chieftain prided himself on being the greater thief, the chieftain became naturally jealous of his neighbours. He was conscious that if his arm was against every man, every man's arm would be against him. Settled among the injured inhabitants of a country whom he had plundered and distressed, he was careful of his own strength. But he was not only apprehensive of the vengeance of the oppressed, he was equally jealous of his fellow lords. Hence he bound his followers by oath to be true to his person; and exacted the most solemn promises of fide-

Origin of its institution.

[264]

is perfected by the admittance of the tenant, and the fine is not due till *after* the admittance. 1 *East*, 632. *Graham v. Sime*, & *vid. infr.* p. [286-7.]

lity from him who was about to be a
into the tenancy.

Tenant at will
was not sworn
unless by cus-
tom.

A tenant strictly at will was not to
fealty, as the lord might amove him :
sure. A copyholder, however, not
considered as a tenant strictly at will
as irremovable while he performed his
vices, was, in pursuance of custom
sworn (x).

Who may
take fealty.

It should seem, that any lord with
power to admit, has power to take
fealty. But he need not take it in person : it
may be administered by his steward
or bailiff (a).

Who may
swear it.

[265]
Not by
attorney.

But the tenant cannot make his fealty
another ; for a person cannot swear
fealty (b) ; though instances of one
swearing in the name of another are
wanting (c).

(x) See *Fitz. Abr. tit. Serement. Co. Litt. 6*

(a) *Co. Copyh. s. 20. Tr. p. 15. Litt. s. 92.*

(b) *Co. Litt. 68. a.*

(c) *Harg. N. (5) to Co. Litt. 68. a. See*
33 Hen. 6. c. 6.

An infant, it is said, cannot be sworn to fealty (*d*). But it should seem that a feme covert should be sworn. For in the cases of copyholds the feme covert only is admitted (*e*) and not the husband; and, therefore, she only must do fealty. The statute of *George the First* (c. 29.) has made no provision with respect to the oath.

Infant, *feme*
covert.

It is now, however, seldom administered in these or in other instances; but when the oath is taken it may be in this form:

“ You shall swear that, as to the tenements to which you have been now admitted, you will be a true and faithful tenant to the lord of this manor. So help you God.”

Form of the
oath.

As fealty is now only requisite for the preserving and evidencing the existence of the subsisting tenure, it is become usual to respite it on the admission of a copyholder; as his tenure is sufficiently evidenced with-

(*d*) 2 *Inst.* 11. *Co. Litt.* 65. a. and the books there cited.

(*e*) See 1 *Hen. Blackst.* 341-2. *Compton v. Collinson.*

416

[286]

prescribed several centuries ago. It is included in that contained in our statute book, of the time of *Edward* the Second, which form is thus :

“ Hear you my lord *R.* that I will be faithful and true, and faith to you will bear, for the tenements which I claim to hold of you ; and that I will lawfully acknowledge and do to you the customs and services that I ought to do at (or according to) the terms assigned : So help me God and the saints(*g*).” [267]

The villein also swore that “ he would be justified by his lord in body and goods.”

In forms, however, of more ancient days, the clause we have animadverted on is not found : that given us by *Bracton* (*h*) is thus :

(*g*) “ Quaunt fraunk homme ferra feaute il tendra sa main outre le livre & dirra issint ; ceo oiez vous monsieur *R.* que jeo vous serrei foial & loial & foy vous porterei des tenementz qe jeo clayme de vous, & loialment vous contuestrei & loialment vous ferrei les custumes et les services qe faire doie as termes assignez ; si moy eide dieux & les seintz.”

(*h*) *Bract. Lib. 2. cap. 35. sec. 9. fol. 80. a.* “ Hoc

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Pealty is
sworn in re-
spect of the
tenements.

[268]

We come now to the inquiry into what shall amount to an admittance; or into an admittance by implication. Admittance by implication.

An admittance need not be in any particular form of words* : for, if we look to the reason of the thing, we may conclude, says Chief Baron *Gilbert* (l), that any thing that expresses the lord's consent to the surrender should amount to an admittance ; for it is his consent only that is requisite after the surrender, to make the surrenderee a tenant ; and what matter is it whether that be done by *dominus concessit et admissus est*, or by an act that amounts to as much ?

Thus if the lord says to the surrenderor, " You have surrendered to the use of such an one, to which surrender I agree ;" it will be a good admittance of the surrenderee (m). [269]

So if the lord, *knowing of the surrender*,

* A. surrenders to the use of B.—lord grants to B.—good. See *Calth.* 99.

(l) *Ten.* 282-3.

(m) 3 *Bulst.* 219. per *Cur.* in *Rosewell & Welch*, and *ibid.* 232. in *Elkin & Wastall*.

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be admitted: the admittance of *I. N.* would [270]
 be implied, as it should seem from the better
 authorities (*r*). For as Lord *Coke* argues on
 another occasion, “The lord’s acceptance of
 the surrender is *quasi* an admittance; for in
 that he allows him to make a surrender, he
 thereby admits him to have [an estate] whereof
 to make a surrender (*s*).”

Thirdly.—“An admittance is the accept-
 ance of a person into the *Tenancy*.”

When, therefore, the person is not put
 into the *Tenancy* no admittance can take
 place.

Admittance is
 the acceptance
 of a tenant.

If a copyholder surrender to the use of *A.* Trust.
 in trust for *B.*, *A.* will become *tenant* to the
 lord, and, consequently, must be admitted:
 but *B.* taking only an equity, cannot pos-
 sibly be the object of admission, since he
 has nothing to do with the tenancy, which
 is filled by *A.* So if *A.* die, *his* heir must
 be admitted; but if *B.* die, *B.*’s heir, as

(*r*) See 3 *Bulst.* 237. *Rawlinson v. Greaves.* *Gilb.*
Ten. 282-3. and *Watk. N.* cxxx. p. 457.

(*s*) See *Cro. Eliz.* 504. *Gyppen v. Bunney.*

such, can no more need admittance than *B.* himself could have done (*t*).

Condition.

[271]

So if a surrender be made on condition, the surrenderee must be admitted within the prescribed time (*u*): and if the condition be fulfilled on the part of the surrenderor, or broken on that of the surrenderee, the surrenderor shall be in of his old estate, and consequently require no new admittance; he being already in the tenancy (*w*). But if the surrenderor fulfil not the condition,

(*t*) See *Moore*, 890. *Rivet's case*. 1 *Vern.* 441. *Trinity College Cambridge v. Browne*. And *post.* ch. 7. p. [293]. [Devise of a copyhold to two and their heirs, (and who appear to have been accordingly admitted,) *in trust* to permit *A.* to enjoy the same, or to pay to or permit her to receive the rents during her life, for her separate use, and subject to such estate of *A.* to such persons, &c. as *A.* should by her will appoint, and in default of appointment, to the right heirs of *A.*—An appointee under the will of *A.* takes a *legal* estate, although the trustees had never surrendered to the use of the will of *A.* nor had *A.* been admitted tenant. 5 *Taunt.* 382. *Doe d. Woodcock v. Barthrop*. See also as to trusts, *supr.* p. [212] and *infr.* p. [293].]

(*u*) See *ante*, ch. 3. p. [84], &c. [116], &c.

(*w*) 9 *Co.* 107. a. *Kitch.* 123. a. *Co. Copyh.* s. 56. *Calth.* 60. 67. *Cro. Eliz.* 239.

or the surrenderee infringe it, the estate will become absolute in the latter; and, consequently, the former will have only an equity of redemption which lies not in tenure (*x*); and if the estate afterward come to the original surrenderor, he must be admitted to it as if it had never been in him (*y*). Equity of redemption.

If a copyholder in fee surrender to a person for life, or for any other particular estate, he shall, on the determination of such estate, be in of his old seisin, and, consequently, need no admittance (*z*). Reversion.

If a person have only an authority or power, but no legal interest in the copyhold, no admission can be necessary; for he has nothing to do with the tenancy (*a*): but the appointee must be admitted, as *he* will become tenant to the lord (*b*). Authority.

(*x*) See *ante*, p. [120]. and next chap. p. [294].

(*y*) 12 Mod. 49. *Benson & Scott*, and *ante*, [121].

(*z*) 9 Co. 107. a. & *post*. [287-8].

(*a*) *Cro. Jac.* 199. *Beal & Sheppard*, and *post*. [294].

(*b*) See *ante*, [105]. & *post*. ch. 7. [294-5].

[272]
Guardian.

The bailiff who is only a pignor of
fits and no tenant, needs no admitt
Nor shall a guardian, as such, how
pointed, be admitted himself; *but* *by*
by such his guardian: The infant,
his guardian, being tenant to the lord

Survivor of
joint-tenants.

If there are several joint-tenants
been admitted, and one die, the
continue in of their former admitt
new admittance can be necessary as
no new tenancy created (d).

Coparceners
and tenants
in common.

But it is otherwise with respect
ceners and tenants in common;
transmit several estates; and the
taking from them will be in of
seisin (e).

Widow, &c.

A widow taking her freebench, or
band his curtesy, or on surviving
who was a termor for years, are
continue the seisin of the deceased

(c) Co. Copyh. s. 56. Tr. 128.

(d) Co. Copyh. s. 56. Tr. 130. Kitch. 12

(e) Co. Copyh. ubi sup. Calth. 64. and post.

therefore, to require no new admission; though some assert it to be dependent upon custom. (f).

As the tenant could not marry without the consent of the lord, he could not, by reason of such marriage, introduce a person [273] into the tenancy but by the lord's approbation. If the lord approved of the individual it was a direct acceptance of such person into his allegiance, family, or tenancy. No further admission could have been requisite: he had already accepted the person as worthy of his confidence, and as entitled to his protection.

On the marriage of a feme copyholder, the husband becomes entitled to the possession of the lands,—to receive the rents and profits; and if she took by descent he may even enter before admittance (g). He too must return the services to the lord (h): and it is

(f) See *post.* ch. 7. p. [299]. and the books there cited.

(g) See *Watk. on Desc.* 53-4. Not. and the books there cited.

(h) *Calh.* 52. *Cro. Elix.* 149. *Hedd v. Chaloner.*

the husband and not the wife, who is to do suit and appear upon the homage in court (i). With respect to freeholds, the husband before issue had, did homage together with the wife; though *he* only repeated the words: yet, after having issue, he did homage alone (k). But as to copyholds, the having issue does not, generally speaking, seem essential to curtesy. Without a special custom, copyholds are not subject to curtesy at all; or, in other words, the husband is not entitled to them after the death of the wife. And in alleging such custom when it does exist, the having issue is seldom laid as a requisite (l). In such cases, therefore, he is as much fixed in the tenancy *before* issue, as much *initiated*, as the free-tenant would have been afterwards. The

(i) See *Cro. Eliz. ubi sup.* And this is the usual practice.

(k) See *Co. Litt.* 66. a. and 2 *Bl. Comm.* 126. ch. 8. and see *F. N. B.* 257. F. & Note (b).

(l) In a great number of manors the custom runs, generally, that the husband surviving the wife shall have her lands, &c. In other, and chiefly more modern, customals, it is expressly said, that he shall have them. "whether issue or no issue."

If the husband was a copyholder in his own right, he, of course, did suit ; but when he died, his wife became entitled by custom to retain the lands, and then she sat on the

[275]

Homagiu. Ric. Wood, in Jure Uxor. } Jur.
Stephũs Fox, in Jure Uxor. }

to this, that a fine being mostly paid on marriage it would have been unreasonable for the lord to exact another in consequence of a new admission(o). In all points there was no necessity or reason for an admittance of the one on the death of the other. The survivor was already known to the lord and approved of by him; and the legitimacy of the possession was equally notorious to the tenants of the manor. [276]

Again; though a copyhold be limited to several persons successively by way of remainder, the admittance of the particular tenant will be the admittance of all; though he be only tenant for years: for the particular limitation and remainders over, form but one estate at law(p). The seisin extends to the remotest remainder-man; and those in remainder may surrender their portions(q), or enter when their estate falls into

Particular
estate and
remainders.

(o) *Litt. s.* 174, & 209. *Co. Litt.* 117. b. 139. b.

(p) 4 *Co.* 23. a. 1 *Vent.* 260. *Batmore & Graves.* 1 *Mod.* 102. 120. *S. C.* 2 *Lev.* 107, &c. &c. See *post.* ch. 7. Of Fines, p. [296].

(q) *Cro. Eliz.* 504. *Gyppen & Bunney.* 3 *Leon.* 239. *Butler & Lightfoot.* 4 *Ibid.* 111. *Hegger & Felston.* *Cro. Jac.* 31. *Auncelme v. Auncelme.*

possession, though they never were personally themselves*.

Reversion.

A reversioner also may surrender the existence of the particular estate particular estate determine, he shall *quo prius* (s); for a reversioner or of his original seisin.

[277]

Surrenderee
of a remain-
der or rever-
sion.

But if the particular tenant, man, or reversioner, surrender to another, or die and the estate do surrenderee or the heir must be

* If the admission of the particular tenant that of the remainder-man, so as to vest the the remainders would be contingent till the mission of the remainder-man, which would after the determination of the particular sides, the remainder-man would not be in and consequently the lord could not enforcement of the heir of such remainder-man quently claim a fine, (see 3 Mod. 221. A ton,) nor could the remainder-man alien. lord admit the remainder-man without a particular tenant,—whether it would not sion of him also?

(r) See *ante*, ch. 3. p. [58].

(s) 9 Co. 107. a.

for the original seisin cannot extend to them (t).

So, if a copyhold be surrendered to the Joint-tenants. use of two or more persons jointly, the admission of one of them will be the admission of all; as they all compose but *one tenant* to the lord (u).

Each being sesied *per mie et per tout*, either of them may release to his companions, and no further admission of them will be requisite; as the tenancy would not be altered by the secession of the individual (w).

So, if one die, the others take his share, and continue in on the original admission (x).

(t) *Fitz. Recov. en Value*, 13. and see *Watk. Gilb. Ten.* No. lxxvii. p. 417. and *post.* ch. 7. Of Fines, p. [297].

(u) *Co. Copyh.* s. 35. *Tr.* 82. *Kitch.* 122. a. 2 *Wils.* 162. *Roe v. Hutton*, and *post.* ch. 7. p. [298].

(w) *Winch*, 3. *Wase & Pretty.* *Watk.* No. lxix. to *Gilb. Ten.* 411. *Co. Copyh.* 35. *Tr.* p. 82. *Hetley*, 150. in *Mortimore's* case.

(x) *Kitch.* 122. a.

Coparceners

And as several coparceners are but one tenant (*y*), one admission will suffice for all of them.

[278]

There is, indeed, a *dictum* of Lord *Kenyon* to the contrary, in the case of *Doe d. Tarrant v. Hellier* (*z*), that, though one joint-tenant fills the tenancy, it is not so as to coparceners: yet if this be law, it would, I apprehend, be no small difficulty to reconcile it with former decisions (*a*).

In many manors *, in various parts of the kingdom, particularly in *Suffolk* and *Essex*, it is usual to admit coparceners together and to take single fees. And in *Alison's*

(*y*) Vide *Brit. cap.* 119. f. 270. b. *Fleta, lib.* 6. c. 1. s. 17. *Litt. s.* 241. *Co. Litt.* 67. a. &c. 163. b. &c. 3 *Leon.* 13. *Ca.* 30. *Bro. Coparceners*, 3. *Stat. Hibern.* 14 *Hen.* 3. 2 *P. Wms.* 614, &c. &c.

(*z*) 3 *Durnf. & East*, 165.

(*a*) See the books before cited in (*y*) and the second resolution in the case of *Morris & al. v. Prince*. *Cro. Car.* 521. Et vide *Liber Assisarum*, 209. b. *Pasch.* 34. *Ed.* 3. pl. 15. Coparceners join in avowry, ejectment, &c. 1 *Ld. Raym.* 64. *Hedman v. Bates*, & 726. *Boner v. Junor*.

* See Appendix, No. III. *Customs of Weardale*.

case (b) the Lord Chancellor decreed that a surrender should be made from a trustee to two daughters, who were heiresses to the premises ; and that they should be *admitted as coparceners*.

Coparceners may, indeed, be admitted severally, and this is frequently done. And the reason for so doing is obvious, as to the steward, since it multiplies his fees. The fine, indeed, would be the same, whether they were admitted together or separately ; since, if they were admitted separately, the single fine would only be apportioned ; but the fees would be increased according to the number of persons admitted (c). [279]

If coparceners are admitted together, it should seem that they may *release* to each other ; as coparceners may release at common law (d) : and, if so, no further admission can be necessary any more than in the case of

(b) 6 Mod. 62.

(c) And, what is of consideration, the *stamps* would now be multiplied on such separate admissions. See stat. 37 Geo. 3. cap. 90. s. 11 & 12.

(d) Co. Litt. 273. b. *Gill. Ten.* 73.

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[200]

But tenants in common taking several estates, they must be severally admitted: here being not only a plurality of persons but of tenants also, as the terms imply (*h*). And, consequently, if one tenant in common surrender to another, or die, the surrenderee, or the heir, must be regularly admitted (*i*). Tenants in common.

If a copyholder surrender his copyhold Lord. to the use of the lord, the interest of the copyhold will be sufficiently vested in the lord immediately upon the surrender without any other act done; for the lord cannot admit himself (*k*).

Admission is an initiation into the *tenancy*, is an acceptance of *a tenant*; and at the same time investing the person admitted with the corporal possession of the lands.

(*h*) See 1 *P. Wms.* 21. 1 *Lord Raym.* 631. [6 *East*, 476. *Attree v. Scutt.*] And *post.* p. [304].

(*i*) *Co. Copyh.* s. 56. *Tr.* 130.

(*k*) See *Co. Copyh.* s. 38. *Tr.* 85, and *Suppl.* s. 1. p. 145; and see 1 *P. Wms.* 17. *Lex Custumaria*, 102. ch. 13.

[281]

The lord in
admitting
is only an
instrument.

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ceases, when the custom immediately attaches and imperiously prescribes the form. He becomes a mere instrument; he cannot vary the tenure or estate, the rents or services. If the custom warrant an estate *durante viduitate*, and the lord admit for life, it will not be obligatory on his successor: if he reserve ten shillings where the usual rent was twenty, it will not be good. And indeed the law is very strict in this point of reservation; for though the ancient accustomed rent be reserved according to the quantity, yet if the quality of the rent be altered, the heir may avoid this grant. For if the ancient rent from time to time had been twenty shillings in gold, and the lord [232] reserve it in silver, this variance of the quality of the rent is in force to destroy the grant: so if the ancient rent has been accustomedly paid at four feasts in the year and the lord reserve it at two feasts*. So, if two copyholds escheat to the lord, the one of which has been usually demised for twenty shillings rent, the other for ten shillings rent, and he grant them both by one

* See *Cro. Car.* 16. *Cook v. Younger.*

438

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to *A.* If he admit *A.* and *B.*, *A.* shall take [283]
 the whole ; and the admission of *B.* shall
 have no operation. If the surrender had
 been to *A.* for life, and the lord admit him
 in fee, *A.* would only take for life agreeably
 to the surrender. If the surrender had been
 to *A.* absolutely, and the lord admit him on
 condition ; or if the surrender had been on
 condition, and the lord admit him abso-
 lutely ; the surrender shall control the ad-
 mission (*m*).

On admittance on a descent, the person
 admitted is *in* by his ancestor (*n*), and on a
 surrender by the surrenderor (*o*) ; and not
 by the lord ; and, therefore, he shall be para-
 mount the lord's charges (*p*). And, in like
 manner, he who is admitted on a grant, is,
 on such admittance, *in* by the custom ; and

The surren-
 deree is *in*
 by the
 surrenderor.

(*m*) 4 Co. 28. b. Co. Copyh. s. 41. 3 Burr. 1543.
Baddley v. Leppingwell, 4 Ibid. 1961. *Roe d. Noden*
v. Griffiths.

(*n*) See 4 Co. b. *Brown's case*.

(*o*) See *ante*, ch. 3. p. [106].

(*p*) Co. Copyh. s. 41. *Tr.* 91.

therefore, not subject to any
cumbrances of the lord (*q*).

Relation.

[284]

And as the surrenderee is
sion, in by the surrenderor, s
shall relate to such surrende
from its date. Hence the n
former are avoided, and th
confirmed. Hence the inter
of the estate of the surrende
and attach to that of the surr

(*q*) 8 Co. 63. *Swayne's case*. 1
Gillb. Ten. p. 430, and *ante*, ch. 2.

(*r*) See further, *ante*, ch. 3. p. [14

CHAP. VII.

OF FINES.

FINES payable to the lord by the copyholder [285]
may be divided into three classes ; the first Fines divided
class being due on the change of the lord, the into three
second on the change of the tenant, and the classes.
third for license to empower the tenant to do
certain acts, as to demise, &c.

When the fine is due on the change of the lord, such change must be by the act of God, and not in consequence of any act of the party. It can, therefore, be only claimed on the *death* of the lord. Should even a custom be alleged for its payment in cases in which the change was by reason of the lord's own act, such custom would not be supportable: as otherwise the lords might alien at pleasure, and so the tenants " be oppressed by multitude of fines (s)."

When due on
the change of
the lord.
See 4 Bro.
P. C. 204.
Lowther
v. *Raw*.

(s) *Co. Litt.* 59. b.

But where the fine is claimed only on death, any lord who has a right to admit, has a right also to such fine on the death of his predecessor; whether he be tenant for life only, or by the curtesy, or the like (*t*).

[286]

Due on the
change of
the tenant.

When the fine is due on the change of the tenant, it matters not whether that change be effected by the act of God or by the tenant's own act (*u*). Whenever the tenancy is changed there a fine is payable. Should the tenant be compelled to pay a fine by reason of any act of the lord, he would, as we have seen, be subject to much oppression; but where it is the consequence of his own act, he is left to his own discretion.

Defined.

A fine, therefore, of this second class, may be thus defined:—"A sum of money payable by custom to the lord, on the admission of every tenant, for each tenement to which he is so admitted."

(*t*) 1 *Strange*, 654. *Duke of Somerset v. France & al.*

(*u*) See *Co. Litt.* 59. *b. Kitch.* 122. *a.* 1 *Burr.* 206. *Earl of Bath v. Abney.*

Firstly, then, it is "*payable by custom*:" Payable only by custom.
 For where there is no custom there shall be no fine. Thus, in many manors it is not customary to pay any fine on the admittance of a person taking by descent (*w*).

Secondly, it is payable "*on admission*:" —on admission of a new tenant.
 "For the admittance is the cause of the fine." Hence no fine can be due till the tenant be actually admitted (*x*); and, of consequence, the lord or steward cannot refuse admission till the fine be paid: nor is it in any wise necessary that the person praying to be admitted should *tender* the fine, though the fine on admission be certain; notwithstanding it is otherwise laid down [287]

(*w*) See 3 *Durnf. & East*, 162. *Doe d. Tarrant & al. v. Hellier & al. Kitch.* 103. *b.* and *Dougl.* 726, in *Not. & Freem.* 496. *pl.* 670.

(*x*) In some manors there are fines due for licence to *aliene*; such fines, therefore, must necessarily *precede* admittance, if admittance be necessary. These are expressly excepted in the act of *Charles* the Second for abolishing the feudal incidents. But they are wholly different from those fines of copyholders which are spoken of in the text. They fall within the third class of our division of fines; and will be noticed at the end of this chapter.

in some of the books (y). For it is absurd to tender it *before* it becomes due, and it would not become due till the admittance of the tenant (z).

And, consequently, where the necessity for an admittance, no fine is claimed.

Not payable
by reversioner
on re-entry
for condition
broken, or on
determination
of an estate
for life, &c.

As where a person surrenders the reversion, or for a less estate than he has in the premises, so that the reversion continues in him, and the condition broken, or fulfilled (as the case may be), or the particular estate determine, he shall be *quo prius*; and so no new admittance is required.

[288]

(y) *Moore*, 693. *Ca.* 851. *Dalton & Ham* *Eliz.* 779. S. C. but note the same case is in *Coke* (4 *Rep.* 28. a.) who says it was adjudged

(z) 4 *Co.* 28. a. *Hobart & Hammond*, *Sande's case*, and *Bacon & Flatman*, as so 1 *Roll. Abr.* 507. *Copyh. D. pl.* 2. 2 *J. East*, 485. *The King v. the Lord of the Hendon*; and 1 *East*, 632. *Graham v. Sir* 1543. p. *Wilmot, J. in Baddeley v. Leppin* see *Kitch.* 122. a. [And *supr.* p. [263].]

be requisite, and, consequently, no fine can be due (a).

But if the original copyholder convey the reversion to a stranger, such stranger cannot enter before his admission. For before his admission he is not tenant to the lord. Such reversion lies in tenure; and the reversioner cannot place another in the tenancy without the lord's consent: he can, therefore, only pass his reversion by surrender, on which an admission would be requisite; and, consequently, a fine would be due (b).

*Alit. of a
grantee
of such
reversion.*

It was said by *Lord Mansfield*, in the case of *Roe d. Noden v. Griffith*, according to *Sir James Burrow*, that if a copyholder in fee (to which estate he had been regularly admitted) surrender to the use of himself for life or in tail, with remainders over, and the

*Surrenderor
taking a new
estate.*

(a) 9 Co. 107. a. 1 Leon. 174. *Bulleyn & Grant*, Cro. Eliz. 148. S. C. *Kitch.* 123. a. *Calth.* 60. Co. Copyh. s. 56. Tr. 129. *Gilb. Ten.* 181. 194. 276. See also 2 *Just. Blackst. Rep.* 1046.

(b) See *Gilb. Ten.* 181, and *Watk. N.* lxxxiii. p. 429. and see *Fitzh. Abr. Recouv. en value.* 13.

ultimate limitation
 he need not be ad
 [289] for he was tenant
 would not be subje

But this position
 tion.

In *Mr. Justice*
 same case (*e*), the
 is said to have bee

Besides, thoug
 was the *old* estat
 the *prior* one was
 freehold lands de
 heir shall be in b
 vise to fifty strar
 mitation to his o
 be in by *descent* :
 would take *a nex*
 not the estate in

(*d*) See 4 *Burr.* 19

(*e*) See 1 *Blackst. R*

* No means of con
ante, p. [237].

cestor; in the latter he would take the *old* estate: a portion of that very fee.

The particular estate, therefore, taken by the surrender, was *not* the estate which the tenant had before, as the reversion was. It was a *new* estate to *which* he had never been admitted. "The lord," indeed, "knew his tenant;" but an admission is not merely an acceptance of a person as a tenant, *but as a tenant of the particular lands.*

If a person had been regularly admitted to *Black Acre*, and had sworn fealty to the lord, and purchased *White Acre* afterwards, he must have been admitted to *White Acre* also (*f*): yet "the lord knew his tenant:" he had accepted him as a tenant, generally, and had security for his fidelity. In some manors*, indeed, he would not pay *a fine*; but he certainly ought to be admitted equally as if he was to pay one. [290]

(*f*) See *Co. Copyh. s. 21. Tr. 16.*

* See Appendix, No. IV. *Customs of Thornbury, co. Gloc.*

In *Burrow* it is said not have compelled a husband, even if the wife there could be no admission unborn. But if the wife life of the husband, it could *him* the more or the less died, there were *trustees* there was a vested remain serving contingent ones.

Again, it is there said, be admitted who was *tenant* is true if we confine it. He could not be admitted to which he had been already could not be placed in already filled; or have the which he already had. on "it was not requisite it might have been so for *dren.*" Till admittance, continue tenant; but the *old estate*, which he had of such surrender, and not taken under its limitation upon this ground, therefore trine is to be supported.

needs no admission ; for he is already tenant to the lord, as to the lands, with respect to his *old estate*; which must continue till there be an admittance under the surrender. And the wife need not be admitted till the estate comes into possession by the husband's death. The surrender being for a *good* consideration, cannot be revoked by the husband, though there be *no* admittance; and the lord is bound by the acceptance of the surrender, and compellable to admit according to its limitations. The admittance of the surrenderor, therefore, may not be essential, as he would continue tenant as to his old estate; but it does not appear clear that the lord might not call him in by proclamation, and compel him (as it is said in Mr. Justice *Blackstone's* report of the case,) to be admitted under pain of forfeiture, to that estate *which he is to take under the surrender*. Where the lord is compellable to accept a surrender, he may, in his turn, compel an admission as a consequence*.

* But *quære* : as it seems settled that the lord has no means of compelling the admission of a surrenderee, except by special custom. See *ante*, p. [237].

He may, indeed, wave such admission; but the waving of such admission is an acknowledgment of his right to insist on it if he chooses to do so.

[292]

As to the fine, indeed, much may be urged. For though a fine cannot be due without an admission, an admission may be without a fine. However, as a *new estate* is limited, it should seem that a fine would be due; though I believe it is seldom taken *as to the estate of the surrenderor* in cases like these*.

Not due on
a release
of right.

If a person having a right to a copyhold, release to the tenant by wrong, no fine will be in consequence due (*g*); as the release of a copyholder can operate only by way of extinguishment (*h*); and the releasee having been already admitted, need not be admitted again.

* A special custom that none shall be taken. See Appendix, No. IV. *Customs of Thornbury*, co. Gloc.

(*g*) *Co. Litt.* 59. a. N. (2.) 4 *Co.* 25. b. 6 *Vin. Copyh.* (z. a.) pl. 9. and see *Watk.* No. lxix. to *Gilb. Ten.*

(*h*) See *ante* p. [6]. [279].

So if a copyholder be disseised, and afterwards enter on the disseisor, or recover by plaint in nature of an assize, he will need no new admission, and, therefore, shall pay no fine; for he will be in of his old seisin, and restored to his former tenancy (i).

or recovery
of seisin by
a disseisee;

In cases too in which the possession of the deceased is, as it were, continued, as in those of dower, &c. it seems no fine will be payable as no new admission will be necessary: but for this see *post.* p. [299].

—nor where
the same
estate is
continued.

[293]

Thirdly :—A fine is payable on the admission “*of a tenant.*” And here we may inquire who comes within that denomination at law. Now a *tenant* is he who *holds* of the lord (k); and, consequently, there can be no tenant where there is nothing *held*: and, therefore,

Tenant,
whom?

A person having an equitable interest only, as, *first*, A *cestuy que use* or *trust* (for the statute of uses does not extend to copy-

Not payable
by *cestuy*
que trust.

(i) *Co. Copyh.* s. 56. *Tr.* 129.

(k) *Co. Lit.* 1. a. & b.

holds (*l*.) cannot be a tenant; as an use lies not in tenure (*m*).

And, as the feoffee to uses at common law (*n*), so here the tenant of the legal estate is tenant to the use, and, consequently, where a copyhold was devised to *A.* in trust for *B.*, *A.* must be admitted; and on his admission a fine shall be due*: and if the estate so devised

(*l*) *Cro. Car.* 44. 2 *Ves.* 257.

(*m*) 2 *Bl. Comm.* 331. oh. 10. See *Co. Copyhold* 2 *Ves.* 304. *Jenk. Cent.* 190. *Ca.* 92. *Hard.*

(*n*) See *Jenk. Cent.* 190. *Ca.* 92. 2 *Ves.* 304. to *Co. Litt.* 271. b.

* The trustee shall be allowed it out of the profits of the trust estate. See *Moore*, 890. *Rivet's case*. A case laid before me, wherein *A.* devised certain lands and copyhold premises to three trustees and the said trustees in trust, to pay the profits over to *B.* for life, and after his death to convey and surrender the same to his children with executory devise in fee to *C.* and *D.* with a residuary devise to the heirs of testator:—Other real and personal, was devised to said trustees—and said trustees were executors:—residue of the estate to *B.* *C.* and *D.* or such of them as should attain the age of twenty-one years in fee or absolutely. Trustees were admitted to the copyhold, and paid fine and fees, which they paid

descendible, the heir or representative of *A.* must be admitted on his death; but on the death of *B.* no admission would be requisite (o).

[294]

Secondly :—If a copyholder covenant to surrender to the use of *A.*; and *A.*, before a surrender be made, assign his interest to *B.* and then the surrender be made to the use of *B.* one fine only will be due on *B.*'s admission; as *A.* was never tenant to the lord (p).

Covenant.

the general account, and not to that of *B.* who was entitled to the profits of the copyhold for life. There was a clause in the will, authorizing trustees to reimburse themselves out of the trust monies thereby vested in them, or which should come to their hands by virtue of the will. I was of opinion that the trustees should reimburse themselves, as to the fine and fees, out of the profits of the copyhold to which they were admitted.

(o) See *Moore*, 890. *Rivet's case*. 1 *Ves.* 121. *Allen v. Poulton*. 1 *Burr.* 206. *Earl of Bath v. Abbey*. 1 *Vernon*, 441. *Trinity College, Cambridge, v. Brasse*. Custom to pay different fines. *Cro. Jac.* 671. [See further as to trusts, *supr.* {212}. {270}.]

(p) 2 *Darnf. & East*, 484. *The King v. the Lord of the Manor of Hendon*. *Vide ante*, p. {103}. N. (s) and a provision made for this case in the *Customs of Westminster prima*, c. Dorset, Appendix, No. 41.

Equity of
redemption.

Thirdly :—So a person having *an equity of redemption* may dispose of it by deed or devise without a surrender (*q*), and, consequently, no admission would be necessary, and consequently no fine would be due. On forfeiture or breach of the condition, the surrenderee would become the legal tenant; who must thereupon be admitted and pay his fine (*r*).

Authority.

Fourthly :—So a person having *an authority* only, and not any legal interest or estate in the premises, is not a tenant; and, therefore, needs no admission, and, consequently, shall pay no fine: as if “*I order and direct*” my executors *to sell* (*s*).

(*q*) 1 *Atk.* 388, 390. 2 *Atk.* 38. 3 *Atk.* 75. 1 *Bro. Chan. Cas.* 480. *Macnamara v. Jones, &c.*

(*r*) *Gilb. Ten.* 276. See 2 *Ves.* 302, &c. *Fawcett v. Lowther.* 2 *Vern.* 367. *Tredway v. Fotherley.*

(*s*) *Cro. Jac.* 199. *Beal & Shepherd.* *Godb.* 46. *Ca.* 57. 2 *Wils.* 400. *Holder d. Sulliard v. Preston.* Such an authority good against the lord by escheat. 2 *Co.* 53. a. But it seems that the lord may compel the heir of the testator to be admitted for the intermediate estate; as the fee will descend to the heir till sale, and consequently the lord be entitled to a fine on such heir's admission. (Note, this was suggested to me by

Commissioners of bankrupt have an authority given them by the statute, to convey the copyholds of the bankrupt by deed indented and enrolled; but the person to whom they are conveyed is, by the express provision of the act 13 *Eliz. c. 7. s. 3.* to pay or compound for the accustomed fines. If the commissioners, therefore, convey to the assignees,

Assignment of bankrupt's estate.

[295]

As to the copyholds of collectors of taxes, see st. 43 Geo. 3. c. 99. sect. 52.

Mr. Butler.) If the sale does not actually take place till *after* the third proclamation, the lord may seize; but it should seem only *quousque*, (see *ante*, [234]. and v. s. p. [97].) and if he can only seize *quousque*, the vendee may insist on admittance, and the lord must be contented with the intermediate possession, *as no fine can be due from the heir when the heir was never admitted*; and surely no heir would claim on such terms. See 1 *Wils.* 400-2. Lord C. J. Wilmot says, in *Holder ex dem. Sulyard v. Preston*, (2 *Wilson*, 200.) in a case of direction to sell, similar to the present, "that the lord has a right to call on the heir to be admitted, who has clearly the estate in him. If he does not come in the proper time, the lord may, by the special custom of some manors, seize the estate as forfeited; and by the general law of copyholds *quousque*, upon the principle of laches in the party interested." This was said, in a case laid before me, to have been copied from a MS. note of the case of *Holder d. Sulyard v. Preston*. C. W.

such assignees* must be admitted their fines, and convey the copyhold by the usual mode of avoidance; therefore, the payment of it was recommended by Lord H in the case of *Drury and Mann*, to assigners, to except copyholds out of assignment; and convey to the purchaser (t).

Bailiff of the manor as person of profits.

Fifthly :—Where, by the custom of the manor, the bailiff of the manor has the wardship of the copyhold under the age of fourteen, such person shall neither be admitted nor

* Having only an equity, the assignee cannot convey to another who would then be a purchaser. See ante p. [162-3]. But in the case of *Drury & Mann*, where it is said by Lord Hwicke, that no person can make a conveyance of a copyhold; it must be by the assigners, by the 13 *Eliz.* c. 7. in the bankrupt's lands, but only a part of them. 1 *Atk.* 95.

(t) 1 *Atk.* 95. But qu. whether it is the same. See the state.

because he is but a pernor of the profits, and that not in his own right, but in the right of him to whom he is guardian (u).

Sixthly :—Where a person who has been wrongfully admitted, obtains a release of the right, no new admission can be requisite, as he was before equally tenant to the lord ; and, therefore, no fine will be due in consequence of such accession to the right (w). Release of the right.

[296]

Again :—Such fine is payable on the admission of “ *every* tenant.”—And here it will be proper to inquire, whether, in case several persons be admitted, they shall be considered as one, or as several tenants to the lord. Due on admission of every tenant.

First, When the uses of a surrender are limited to one for life or years, with several remainders over, but one admission is requisite, and, consequently, but one fine will be due. The particular limitation and the Particular estate and remainders.

(u) Co. Copyh. s. 56. Tracts, p. 128.

(w) See before, p. [292].

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Apportioning
fines.

[297]

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If, indeed, a part of the fine only, be imposed on the particular tenant, the residue may be assessed on the person in remainder^(a). And the best and most equitable mode is, to assess the fine on the admission of the particular tenant, and to proportion it to the interests of the several claimants, who may pay their shares on acceding to

be admitted and pay his fine, after proclamations made and presentment by the jury, the lord may seize *quousque* the tenant comes in, and maintain ejectment to recover the possession in the mean time. 5 *East*, 531. *Doe d. Whitbread v. Jenney*.] In this case it was said, that where by custom a fine is to be paid by the remainder-man, he is in such case bound to be admitted. But can there be a custom to have a fine *without* admittance? since admission is the *cause* of the fine. And if a custom be good that requires a fine from the remainder-man, the admission must be wholly independent on that custom, and consequently the necessity of *admission* can have nothing to do with the custom as to the fine, as the custom as to the fine cannot attach till *after* admission. If the admission be not made the fine cannot be due.

(a) 1 *Vent.* 260, &c. as before. [The lord may apportion the fine amongst the different parcels of the inheritance, but cannot remit it entirely to the tenant for life, and charge the whole upon the remainders. 13 *Ves.* 246.]

the possession, when they are called to swear fealty*.

Surrenderer
of a remain-
der-man must
pay a fine;
Fitzk. Abr.
Recouv. en
value 13.

But if a remainder-man surrenders his interest to a stranger, such stranger or admittance must pay his fine. For the admission of the particular tenant to the admission of the original remainderman it was not of the purchaser (b): and a remainder is a tenement (c), as well as an estate in session.

—so of an
heir of the
remainder-
man,

So if a remainder-man die, the interest of the particular tenant would not pass to his heir; for the heir takes from the original remainderman and not immediately from the original surrenderor. He, therefore, has a different interest (d).

* [As to the quantity of fines on estates for life and remainder, *vid. infra*, p. [311]. [312]. And a person having a rent charge out of copyhold does not contribute to the fine. See 1 Bro. C.A. (1791) *Maxwell v. Ashe*. 7 Ves. 184. S. C.]

(b) See Cro. Jac. 31. *Auncell v. Auncell* 213. *Walk. Gilb.* 417. N. 12xvii.

(c) Bro. Ten. pl. 167.

(d) And see 1 Burr. 213. If there be joint tenants who take successively in remainder for life, they will

A reversioner we have seen (c) may enter [298]
on the determination of the particular estate,

admitted on the admittance of the particular tenant for life: for in truth the admittance can only extend to a life in existence, *i. e.* of the longest liver. This is analogous in this respect to a joint-tenancy, which can only last the life of the survivor. In the case of a joint-tenancy the several persons take together; in the former case the particular tenant and remainder-men take successively; yet they take only portions of *one and the same estate*. If the remainder be of a descendible estate, as to *A.* for life, with remainder to *B.* in tail, *B.* becomes tenant on *A.*'s admission, and he may be vouched or surrender. But if *B.* die, living *A.* the heir of the body of *B.* must be admitted to his remainder in tail, as he comes in by descent.

If there be tenant for life, with remainder to the unborn son, or the heir of *B.*; the limitation to the son or heir of *B.* is contingent: but so soon as *B.* has a son born or dies, the use will arise, and be executed or vested, (supposing *A.*'s estate to be in existence,) and so fall within the law as to a vested remainder. In short, coparceners make but one heir,—joint-tenants compose in fact but one tenant,—a particular tenant and the remainder-men take but one estate,—and tenants in common take several; and, therefore, in the three former cases one fine only can be due on admittance, and in the latter the fine must be apportioned, *i. e.* there must be several fines, but those fines, when added together, must amount only to the original fine.

(c) *Ante*, p. [287-8].

without a new admittance or l
would be in of his old seisin :
or reversioner. reversioner die, during the c
the particular estate, his heir
mitted and pay his fine ; for :
a tenement (*f*) : and the heir
by descent.

Joint-tenants. *Secondly*, Where a surrende
the use of two or more *jointly*
but *one tenant* to the lord ; as
but *one* fine is due on their adm
(Death.) on the death of one of them,
take his share and continue in o
admission (*g*).

Coparceners. So as several coparceners in
tenant, *one* fine only would be
admittance (*h*).

If they are admitted severally,
be apportioned : as if three c

(*f*) *Dyer*, 137. pl. 26.

(*g*) See *Kitch.* 122. a. *Co. Copyh.*
162. *Roe d. Ashton v. Hutton & al.*
p. [272]. And in the case of *Fisher v.*

(*h*) See *ante*, p. [277].

admitted severally, each must pay a third of the whole fine.

But when one coparcener dies, the others (Death.)
(or the heirs of the deceased) must be admitted to the share of the one so dying, and [299]
pay their fine (i).

So tenants in common must be severally admitted and shall pay several fines; they
having several estates: here not only being
a plurality of persons but of tenants also, as
the terms imply (k). Tenants in
common.

Thirdly, Where the interest of the person
claiming is only a continuance of the estate
of the deceased. And first with respect to
free-bench. Continuance
of the same
estate.

There are indeed books, in which it is laid
down, that the widow must be admitted to Freebench.

(i) *Co. Copyh.* a. 56. p. 130. *Calth.* 64. *Gilb. Ten.*
Watk. N. clxxiv. p. 478. *Co. Lit.* 185. a. & n. (9).

(k) 1 *Pr. Wms.* 21. 1 *Lord Raym.* 631. *Fisher &*
Wigg. P. Holt, and *ante*, p. [280].

[000]

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Secondly, And so with respect to curtesy; Curtesy. for the husband shall have his curtesy without being admitted after the death of his wife (n).

Thirdly, So if a person intermarry with a feme copyholder in fee or for years, he will become entitled in her right, and shall not be admitted, and, therefore, shall not be subject to fine; nor, in the latter case, if he survive her (o). Seisin in right of marriage.

And with respect to the three instances immediately preceding, we may remark that marriage, being originally with the consent of the lord, amounted to an admission of the husband as tenant. The husband, on marriage, became possessed in the right of the wife; and on marriage a fine was generally

(n) See the books cited in (m) and *Moore*, 507. *Bullock v. Dibley*. 1 Leon. 4. ca. 8. 4 Leon. 117. ca. 236. *Watk. on Desc.* 53-4. not.

(o) *Dyer*, 251. a. *Hauchet's case*. 3 Leon. 9. *De-dicol's case*. *Calth.* 89. 95. *Co. Copyh.* s. 56. p. 129. *Gillb. Ten.* 333. See *Customs of Yatmington prima*, Appendix, No. II. Husband shall pay a penny to the steward.

408

[301]

Executors
must pay a
fine.

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mon-law, interest (*r*). Such interest might be assigned by the lessee without any further license or consent of the lord (*s*): it is extendible at law (*t*); it may even continue after the determination of the copyhold (*u*). The *copyholder* is tenant to the lord *: on his death his heir must be admitted and pay his fine. But the lord cannot notice the change of the lessee: he has a tenant independently of him. But if a term of years be limited on a *surrender*, or created by *devise* (as in the case of the Earl of Bath *v.* *Abney* (*w*), in *Hauchett's* case (*x*), &c.) it would then be held of the lord by copy; the termor would be a *tenant* to the lord; and, therefore, must be admitted and pay his fine.

[302]

(*r*) See *Co. Copyh.* s. 51. *Tr.* 119, 120. 3 *Leon.* 69, 70. *Ca.* 106.

(*s*) 1 *Roll. Rep.* 508. pl. 14. *Johason v. Smart*, and 1 *Roll. Abr.* 508. *Copyh.* (D) pl. 14. S. C.

(*t*) See *Watk.* N. clxvii. viii. ix. *Gilb. Ten.* 467.

(*u*) *Hutt.* 101-2. *Turnor v. Hodges*, and *Watk.* N. cliii. *Gilb. Ten.* 469.

* See *Hob.* 177. *Swinnerton v. Miller*.

(*w*) *Burr.* 202.

(*x*) *Dyer*, 251. a. and *ante*, p. [300].

408

Heir at law.

Occupant,

one (b); as if it be granted to *A. and his heirs* during the life of *B.* In which latter case, if *A.* die during the life of *B.* the heir of *A.* must certainly be admitted and pay his fine (c). [303]

Again: A fine is due "*for each tenement to which he is admitted.*" As where a copyholder has several lands, severally held by several services, by copy, the lord ought to assess and demand the fines severally, for every parcel which is so severally held (d). Several tenements must pay several fines.

(b) 2 *Just. Blackst. Rep.* 1148. *Doe d. Lempriere v. Martin.* Co. Copyh. s. 56.

(c) See Co. Copyh. s. 56. Tr. p. 128. *Gillb. Ten.* 137. [As to the quantity of such fine, *vid. infra.* p. [313].] To *A. and his assigns.* Suppose *A.* to die, (living *cestuy que vie*;) without actually assigning;—would not *A.*'s executors or administrators take as assignees in law? See 5 Co. 17. b.

(d) 4 Co. 27. a. *Taverner & Cromwell.* *Ibid.* 28. a. *Hobart & Hammond.* Co. Copyh. s. 56. *Dougl.* 712. *Grant & Attle*, and the case of *Searle & Marsh*, in *Fisher on Copyh.* Appendix, 280. 282. See also *Cro. Eliz.* 779. *Dalton & Hammond.* [Note. The steward of a manor is entitled to be paid for admissions of a tenant to several copyholds only according to a *quantum*

Surrender by
a particular
tenant and
remainder-
men, &c.

But if the particular tenant, and he in remainder or reversion, join in a surrender, the person to whose use the surrender is so made, shall pay but one fine on his admittance; for but one estate is conveyed (*e*).

By coparceners.

So, if several coparceners join in a surrender, but one fine will be due on the admittance of the surrenderee (*f*).

[304]
By joint-
tenants.

And so of a surrender by several joint-tenants (*g*).

By tenants
in common.

And it is said to be the same as to tenants in common (*h*).

But *quære* whether, if two tenants in common join in a surrender, it shall not operate as *several* grants; (they having several freeholds at common law;) and so several fines be due: notwithstanding the

meruit, unless certain fees are proved to be due by the custom of such manor. 6 *Taunt.* 425. *Everest v. Glyn.*]

(*e*) *Co. Copyh.* s. 56. p. 130. *Kitch.* 123. a.

(*f*) *Kitch.* 123. a.

(*g*) *Ibid.* & *Co. Copyh.* s. 56. p. 130.

(*h*) *Kitch.* & *Co. ubi supra.*

doctrine be delivered otherwise by Sir Edward Coke, &c.

For as tenants in common must be severally admitted, they must, of consequence, have several tenements: and, although several tenements be surrendered by one surrender, the person admitted to them must pay several fines (*i*). And this case differs, I conceive, essentially from the surrender of a particular tenant and a reversioner, or of several joint-tenants or coparceners; for in those instances, but *one* estate is conveyed*.

If a copyholder suffer a recovery by plaintiff in nature of a writ of entry in the *post* for

Fine on a recovery being suffered.

(i) See the books referred to in (*d*) last page.

* [Devisees of a copyhold holding as tenants in common, have several estates, to which they must be severally admitted, and for which several services are due to the lord, and a several heriot on the death of each tenant. And the services, heriots, and fees on admission thus multiplied, shall continue due and payable notwithstanding the re-union of the same land afterwards in one person; the estates or interests in the land, once divided in severalty, continuing always after several. 6 East, 476. *Attres v. Scutt*, and *vid. supr.* [280].]

[305]

his better assurance, and to defeat an estate-tail, those who recover have seisin by precept of *habere facias seisinam*, and they are in the *post*, and by the recovery; and, therefore, but one fine shall be paid to the lord; for the recovery was only for further assurance, and the surrenderee and all make but one tenant by copy, and so there is due but one fine (*k*).

Having thus seen *when* a fine is due, we will proceed to inquire, *first*, as to the quantity of such fine: *secondly*, as to its *assessment, payment, and refusal*; and *thirdly*, as to the *recovery* of such fine when due.

(*k*) *Kitch.* 122. *b.* *Co. Copyh.* s. 56. *Tr.* 130. If the plaint, in nature of a *præcipe*, be brought immediately against the copyholder who has been admitted, (as, for instance, the tenant for life,) it should seem that *no* fine would be due on a recovery, as the tenant to the plaint and the vouchee (the remainder-man in tail) were already admitted, and the recoveror would be in the *post*; *i. e.* in judgment of law, in of his *old* estate. But if the tenant for life surrender to a stranger to make him tenant to the plaint, and he be (as he must be) admitted, a fine would be due on such stranger's admission. So if the recoveror surrender to the purchaser, such purchaser must be admitted and pay his fine.

And, *first*, as to the *quantity* of such fine. Quantity
of fine.

A fine is either certain or arbitrary.

A fine certain is when the *quantum* is fixed Fine certain
or definite, so that it cannot be exceeded by
the lord.

But it is not necessary that it be absolutely certain; if it be only relatively so it is enough: for so that it be independent on the will of the lord, and reducible to a certainty by reference to something else, it is sufficient: as to pay so much as the lands are worth by the year at the time of admittance; for here the value of the lands may be ascertained; being triable by a jury (*l*).

Whether a fine be certain or not must be decided by the rolls of the manor (*m*). To prevent, therefore, their being considered

[308

How prove
whether ce-
tain or un-
certain.

(*l*) 2 *Show. Rep.* 507. *Perkins v. Titus.* *Carth.* 12. S. C. 3 *Lev.* 255. S. C. 1 *Freem.* 494. S. C. The law will presume that a fine is uncertain until the contrary be shewn. *Per Montague*, C. B. 2 *Mod.* 231. *Trotter v. Blake.*

(*m*) See 2 *Bulst.* 32. *Allen v. Abraham.* *Toth.* 167.

as certain, it is usual and prudent to vary them. But if it can be shewn, by a series of ancient rolls, that they were in remote times^o uncertain, the entry of them as certain, in subsequent rolls, though for the period of two or three hundred years, will not make them certain. But the entry of a *few* payments will not be permitted to operate either way; but will be deemed to have crept in through the inattention or negligence of the steward. Thus it was held in Chancery, in Lord *Gerard's* case, that where by ancient rolls it appeared that the fines of the copyholds had been uncertain from the time of *Henry* the third to the 19th of *Henry* the sixth, and from thence had been certain, except twenty or thirty, that those few ancient rolls did destroy the custom for certainty of fines: but that, if from the 19th *Henry* the sixth, all were certain except a few, and *no* (*n*) uncertain rolls before, those few should be intended to have escaped; and so not destroy the custom for certain fines (*o*).

(*n*) In *Godb.* it is "*so*," which destroys the sense of the passage: it evidently is misprinted for "*no*."

(*o*) *Godb.* 265.

An uncertain fine is where the *quantum* Uncertain fine.
 dependent upon the will of the person
 imposing or assessing it. And it belongs, [307]
 common right, to the lord or his steward
 to assess it; but there may be a custom for
 the homage to do so (*p*).

But, though the fine be regarded as Must be reasonable.
 arbitrary, it must nevertheless be, in most
 cases, a reasonable one. Should the lord be
 permitted to assess an unlimited fine, it
 would open a door to much oppression. He
 might use such a power for the purpose of
 inheriting the heir. The law, therefore,
 in many cases, restricted him in his
 demands.

In some manors, as before observed, if the Fixed by the homage.
 lord should be so exorbitant in his demand
 that the tenant cannot accede to it, he may
 have the fine assessed by the homage (*q*):
 but if no such custom exist, the tenant may

(*p*) See 1 *Roll. Rep.* 48. *Crabb & Bevis*, (cited.)
Noy, 3. S. C. and see *Noy*, 2. 1 *Freem.* 494. ca. 669.
10. Jac. 368. *Ford v. Hoskins*.

(*q*) See before (*p*) *Crabb & Bevis*.

Reasonable-
ness to be
determined
on action
brought.

[308]

When re-
stricted to
two years
value;

justify a refusal to pay it in many
the reasonableness of it shall be
on action brought (*r*).

In cases where the lord is con-
admit, and the heirs of the perso
admitted would also be subject
acceding to the estate, the fine
exceed *two* years improved value or
without deducting land-tax, &c. e
rents (*s*).

when not.

But where a *purchaser* only is
not a person taking by descent, th
not be restricted to two years, but

(*r*) 13 Co. 1. *Willow's case*. *Moore*,
v. *Hammond*. 3 P. Wms. 157. *Cowp*
And see the case of *Grant & Astle*, in
note, the lord is not obliged to prove its
able, the copyholder must show it to
Hob. 135. *Denny & Leman*.

(*s*) *Dough.* 722, &c. *Grant & A.*
2 *Strange*, 1042. *Halton, bart. v. Huse*
doctrine seems equally applicable to a copy
with power to nominate a successor. (See
n. (h).) As a copyholder in fee pays in
estate. See post. [311].

custom be to the contrary, take four, five, or even seven years value (*t*).

In some manors a person only fines upon his *first* purchase; as if he purchase an acre of land, he shall pay a fine on his admission to it; but if he purchase fifty acres afterwards, he shall pay no further fine (*u*). In such cases also the lord is not restrained to two or to seven years value (*u*).

So in cases where the lord is not compellable to admit, but the admittance remains merely voluntary, as on grants of escheated lands and the like; or where they are grantable only for life, *without a right of renewal*, the lord is under no restriction what- [309]

(*t*) 1 *Freem.* 496. *Pinsent's* case, cited.

(*u*) Manors of Lambeth and Richmond, in Surry, also Harrow on the Hill, &c. *Kitch.* 103. b. And noticed by *Nottingham, C.* in *Morgan & Scudamore*. See 1 *Freem.* 496. in *King v. Dillington*, and 1 *Show.* 86. *Quære*, if testator devise copyholds to *A. B. & C. D.* and their heirs, in trust, and *A. B.* and *C. D.* be tenants already,—shall they pay a fine? If not, the testator may cheat the lord by making these persons trustees who had been before admitted. *C. W.*

ever (w). In these cases he is under no obligation to grant at all: if he chooses to grant, he may fix his own terms; if the person soliciting to become tenant does not care to accept of the terms, he is not necessitated to do so, and is not injured. These cases are not those in which where the person soliciting admission has no legal right to succeed. Should the law in those instances be left to impose its own terms, the person soliciting might be deprived of his inheritance or prevented from exercising that power of alienation which the law has now invested him with. Here the rule must fail. The lord has a right to make such a bargain as he can.

The rule, therefore, that the lord's fine is confined to two years value of the tenement, is only applicable to certain cases; and its application to have been too hastily extended in some recent instances.

But before we dismiss the subject

(w) 13 Co. 3. See *Hetley*, p. 6, and *Fish*. and see the case of *Wharton v. King*, 4 *Rep. in Escheq.* 659.

advert to two cases which peculiarly demand our attention, which are those of *Morgan & Scudamore*, and *Wharton & King*.

The case of *Morgan & Scudamore* (x) is cited by *Lord Loughborough* in that of *Grant & Astle* (y), and relied upon by his lordship as fixing the fine to two years value. In *Morgan & Scudamore*, indeed, *Lord Nottingham* ordered such fine to be given, but it was under the peculiar circumstances of the case. The copyhold in that case, was granted *sibi & suis* (z), for ninety-nine years; but there was a custom alleged to compel the lord to renew; and although no fine was payable during the ninety-nine years, yet the lands were subject to heriot, &c. But from the honourable Mr. *Legge's* manuscript copy of *Lord Nottingham's* reports, which the author of these pages has been permitted to consult through the favour of Mr. *Hargrave*, it appears that his lordship considered *one year and a half's fine*

*Morgan &
Scudamore.*

[310]

(x) 2 *Chan. Rep.* 134. See *Finch*, 464. S. C.

(y) *Dougl.* 727. in not.

(z) 2 *Chan. Rep.* 134.

to have been the reasonable fine in common cases, referring to Dow & al. v. Golding, in Cro. Car. 196, on which he relied, and therefore gave half a year's value more in this instance by reason of the fine being payable only once in ninety-nine years: so that this case, instead of being an authority for a restriction of the fine to two years value, is a proof of the contrary.

[311]

But it should seem that a fine would now be considered as due in the case of death within the term, whether the grant was *sibi & suis* or whether the person taking, took merely as executor (a): and, consequently, on the renewal of the term, the reason for augmenting the fine in this respect would not now hold.

The other case of *Wharton v. King* is now reported by *Anstruther* (b); and it will,

(a) See 1 Burr. 206. *Earl of Bath v. Abney*. But see 2 Chanc. Rep. 135, where it is stated, "that the tenants of the manor do not, during the 99 years, pay any fine, either on death or alienation, so that nothing is due to the lord for 99 years together."

(b) Rep. in Esch. 659. and see the cases of the Duke

therefore, be necessary only to observe that it was determined in that case, that in order to support a custom of renewal of copyholds for lives, the plaintiff must allege such custom to be on payment of a fine *certain*: to allege it to be on payment of a *reasonable fine* will not be sufficient *. If such custom be not found to renew on payment of a fine *certain*, the lord may insist upon his own terms.

When a person is admitted to an estate in remainder, the fine is usually one half. Fine on remainder.

A tenant for life is to pay a whole fine, equally as if he were tenant in fee, in cases where the heirs are finable †. For in such Tenant for life must pay a whole fine.

of *Grafton v. Horton*, before the Lords, 3 *Bro. Parl. Cas.* 269. and *Lord Abergavenny v. Thomas*, in 1 *Abr. Cas. Eq.* 120. in the margin, and both cited in *Wharton v. King*.

* But see *Noy*, 2. and *ibid.* 3. *Crabb v. Bales*, *contra.* and *Crabb & Bales* or *Bevis*, cited 1 *Roll. Rep.* 48. and *Morgan v. Scudamore*, *ante.* See also *Cro. Jac.* 368. & 4 *Leon.* 238. *Ball's case*.

† Q^y. whether, if tenant for life (where there are remainders over) pay the whole fine, it will not be a lien

[312]

cases, the admission of the tenant in fee is only the admission of an individual; and, when he dies, his heir must be admitted again. The fine, therefore, becomes payable on the admission of a new tenant; and if he is to take the immediate possession, and enjoy it for life, the whole fine will be due. A tenant for life, therefore, shall pay the same fine as a tenant in fee-simple whose heir is to fine on succeeding him: if indeed the heir of the tenant in fee is not to fine on taking the possession, the reason will not hold; and a less fine must be imposed upon the tenant for life.

Fine on estate
for several
lives.

Where there are many lives, the rule, generally, is to take for the second life half what the immediate tenant for life pays, and for the third half what the second pays. So that when there are two admitted, the fine

on the lands? See, as to fine on renewal of leases, 2 Bro. C. C. 659. *Adderley v. Clavering*, and *ibid.* 243. *Stone v. Theed & al.* Note, this was suggested by Mr. Butler. See also 1 Bro. C. C. 440. *Nightingale v. Lawson*. Annuitants not to contribute. 1 Bro. C. C. 444. *N. Maxwell v. Aske*, and 7 Ves. 184. S.C.

is as much as for one life and half as much more: when there are three, as much and half as much as a fine for two lives. Or as Sir *James Burrow* expresses it, the fine for two lives is the *sesqui* of that taken for one; and the fine for three is the *sesqui* of that taken for two (c).

Wilson v. Hoar
2. Barn. & Ad.
Sheppard v. Wood
5 Mees. & We

But this must be understood of persons taking *successive**, or one after another; for if they take as joint-tenants, or as tenants in common, it would be different. In the former case the admission of one would be the admission of all; and but one fine would be due: in the latter, they must be severally admitted, and the single fine be apportioned; i. e. each shall pay a several fine; but so [313] that, when their fines be added together, they shall make the original fine for the whole: thus if the custom be to pay two years' value on admission, and two tenants in common be admitted, each shall pay two years

217, in marg. The rule above noticed is the author of these pages to be observed in various parts of the kingdom.

copyh. sect. 56. Tracts, 130.

value of his moiety : and two such be the same as the single fine for tenement.

Occupant.

If a copyhold be granted to *A* heirs during the life of *B.*, and *A. B.*, the heir of *A.* shall, on his pay such fine as, according to the the manor, a *purchaser* ought to he does not take *by descent* but *occupant* (*d*).

His taking, therefore, as *special* and not as heir, is, as to most importance in this respect. In *manor* as before noticed, a person taking *a* pay *no* fine. In some he is to pay fine than a person taking by *purchase* in others a *less*.

The fine of the *special occupant* be proportioned to the probable *value* of the life of the *cestuy que vie* : for *he* compellable to be admitted und

(*d*) See *Gillb. Ten.* 327. and see also 1 and 2 *Bl. Comm.* 259-60. ch. 16.

forfeiture, so the lord, on the other hand, is compellable to grant him that admittance: [314]
 And if an unreasonable fine be imposed, the courts would equally interfere and aid him as on a strict descent (e).

Secondly ; As to the assessment, payment, Assessment &c.
 and refusal of the fine.

We have already observed that it belongs of right to the lord or the steward to assess the fine, but that by custom the homage may do so (f).

But an assessment by some person or other is requisite (g): though the assessment by

(e) *Watk.* No. clxxi. to *Gilb. Ten.* 476.

(f) *Ante*, p. [307].

(g) *Dougl.* 727. 731. in not. In an action the lord can only recover the fine *assessed*. As if he assess a fine of 100*l.* and remit 40*l.* and on action the jury find the annual value of the premises to be 30*l.* and give their verdict in favour of the lord for 60*l.* he shall not recover, as the fine assessed was 100*l.* See 3 *Bosang.* & *Fuller*, 346. *Lord Northwick v. Stanway*. [But the lord may re-assess such fine at two years value, as

Tenant may
refuse to pay
an unreason-
able fine.

[316]

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pay such fine (*i*). If, indeed, it shall appear on the matter being brought into court that the fine so assessed was manifestly reasonable, and that the tenant had objected to it without good cause, the law would not allow him to shelter himself under any alleged doubts; but would declare it a forfeiture of the tenement on which the fine was assessed (*k*). However, the courts are not rigid in this respect; but allow much latitude to the tenant's discretion. If no sinister intention be apparent on the part of the tenant, the law will not permit a forfeiture to incur by reason of his refusal, though the fine prove eventually not to have been excessive (*l*).

A bill will not lie in equity for an individual copyholder to be relieved against an excessive fine. The reasonableness of it must be determined at law. Though a bill

Bill in equity
will not lie for
relief in case of
an excessive
fine.

(*i*) 4 Co. 27. b. *Hobart & Hammond. Cro. Eliz.* 779.
Dalton v. Hammond.

(*k*) Co. Litt. 60. a. N. (1). *Parker's case* cited.

(*l*) 1 Roll. 507. pl. 5. 3 Lev. 308. *Barnes & Corke.*

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[316]
Several fines
must be sever-
ally assessed.

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Fine to be set
according to
the improved
value.

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A.

FINES.

improved annual value at the time of assessment, and not according to the rent: for the annual rent may in many be comparatively trifling; as where the have been let on lease many years because of the lord (o). And in assessments according to the annual value, assessments are to be made except as to (p).

[317

the fine is certain, the tenant ought immediately to pay it on demand immediately on his admittance*: but where it is uncertain, a day and place should be appointed by the lord or steward to pay the fine: if no such appointment be made, the tenant may be allowed a reasonable time for payment by the law; for he is not obliged to pay on demand; for, as it was impossible for him to know what the lord would require, he could not come prepared for it (q).

When to
be paid.

1042. *Halkon, bart. v. Hassell.*

1047. *Grant & Astle, in not.*

for the lord to seize, &c. till the fine be paid. *Cro. Eliz.* 351.

27. b. 28. a. *Hobart & Hammond.* But

Tender.

If the lord assess an uncertain fine when in truth the fine should be certain, the tenant, to prevent forfeiture, should *tender* what he conceives the certain fine (*r*).

Where to be paid.

[318]

In order to incur a forfeiture for non-payment, the place appointed * for payment of the fine should be within the manor, and so appear. But in an action of debt for the fine it is not essential that the place be expressly alleged to be within the manor, for it shall not be presumed to be out of the manor: and, indeed, it is said that the lord may appoint a place for payment out of the manor, and recover in debt; though such appointment would not be good in case of forfeiture (*s*). But this doctrine appears questionable. For if an appointment out of the manor would be good in one case, it should seem that it would be so in the other; since the difference would be in the event, and

this reason does not seem to apply in cases where the lord is restricted to two years value, for then the tenant might have come prepared.

(*r*) *Cro. Jac.* 617. *Gardiner & Norman.*

* Some place should be appointed. 13 *Co.* 2.

(*s*) 1 *Lord Raym.* 44. *Yasley v. Rainer.*

not in the thing itself. The argument too urged by Serjeant *Rotherham*, in the case of *Yarley v. Rainer*, has much weight ; “ that if such appointment be good, the tenant might be forced to go all over *England* in quest of the lord, to the tenant’s great prejudice.” And it does not appear that the lord can, in any case, oblige the tenant to go out of the manor, except it be to a court within the same honour, by custom, as before noticed (f).

When the fine is regularly assessed, (for a regular *assessment* is absolutely essential (u),) there must be a demand of such fine, and that of the *person* of the tenant (w), by the lord or his steward (x), of the specific sum assessed : for if he demand a larger sum than is due, he must make a new demand before he can recover at law ; for he shall not, on

Demand must be of the person of the tenant.

How to be made.

[319]

(f) *Ante*, p. [253].

(u) *Dougl.* 727. 731, *in not. and ante*, [314]. n. (g).

(w) *Hob.* 135. *Denny & Lemman.* 2 *Mod.* 229. *Trotter v. Blake, in Scacc.*

(x) 2 *Mod.* 229. *Trotter v. Blake, in Scacc.* And the steward may demand it without an express authority in writing. *Trotter v. Blake.*

such former demand, recover 1
due, but judgment shall be
him (y).

As to infants
and femes
covert.

The statute 9 *Geo. c. 29*, re-
holders who are covert or u
entitled by descent or surren
of a last will, ordains that the
on their admission shall an
manded by the bailiff or age
by a note in writing signed
his steward, and left with
feme covert, the guardian c
with the tenant or occupier of
but that no forfeiture of the
ments of such infant or feme
incurred by reason of the n
their fines.

Recovery of
fines.

Thirdly, as to the recovery

Seizure on
non-admit-
tance.

As no fine is due till adm
mittance of the tenant is com

(y) See *Skin. 249. Titus v. F*
Dougl. 731-2. Not.

(z) *Co. Copyh. s. 41. Tr. p. 9*
371-2. ch. 22.

the tenant does not come to be admitted on the usual proclamations, the lord (except in the cases of *femes covert* and infants whose estates are protected by the statute of 9 *Geo.*) may seize the lands to his own use till the tenant appear and be admitted; and if there be a special custom for that purpose, may seize them as an absolute forfeiture (a). [320]

In the cases of *femes covert* and infants who are entitled by descent or surrender to the use of a last will, it is provided by statute that if they do not come in to be admitted in person, or the former by their attornies (which they are thereby empowered to make,) or the latter by their guardians, or having no guardians, by their attornies (which they may appoint by virtue of that act,) at one of the three then next courts, the lord or steward, on due proclamation, &c. may appoint such guardians or attornies for the purpose of admission; and thereupon impose

Provisions by
stat. 9 *Geo.*
in cases of
infants and
femes covert.

(a) 3 *Durnf. & East*, 162. *Doe d. Tarrant & al. v. Waller & al.* *Watk. Gibb. Ten.* 230. & *N. C.* p. 442. *P. Wms.* 151. *North v. Earl of Strafford.* 2 *Atk.* 59. *Clayton v. Cookes*, and *ante*, p. [234], &c.

the just fines. And if such fines as directed by that act, the lord to enter and take the profits (liberty to fell timber) till such consequent expenses are satisfied an account of such profit, &c. to be entitled *.

But if the husband of a feoffee be the guardian of an infant, or the guardian of a woman, or if they then they may reimburse them the profits of the estates as directed by that act (b).

[321]
Action at
law.

And, independently of the

* [The statute, however, is confined to title by descent, or by the use of a will; viz. title by descent, or the use of a will: and does not apply to title by deed. And to a bill therefore by the title in remainder by deed of appointment, and an admission by the tenant out fine, he having paid a fine upon a title under his original title, and upon his discovery and production of the deed in conformity with the statute, a demurrer was allowed. *Ld. Kensington v. Mansell.*]

(b) 9 Geo. c. 29.

FINES.

ven by the statute of *George*
ord may maintain an action
sumpsit, for the fine against
has been actually admitted,
s coming of age: and ac-
Justice *Yates*, in the case of
Iester (c), even during his

ow been long settled that *De*
tus assumpsit will lie for a ^{De}_{an}

ion of debt or *assumpsit* is
atute of limitations (*e*).

limit and die before the fine

lord need not identify the lands.
48. 151. *North v. Earl & Countess*
in equity to ascertain lands. See
Leeds v. Earl of Strafford, &c.
Butteworth & Garnett. Dougl. 722.
notes.

. cited in *Hodgson v. Harris*, as 40
36. pl. 56. S. C. *Gillb. Ten. 178.*

On the lord's death, the fines then due belong to his executors.

be paid, it will belong to his executors; who may bring an *assumpsit* or debt for it (*f*). But it will be *no charge on the lands*: and, therefore, the persons entitled to be paid, can have no action or bill in remedy, against a *purchaser* or *seller* for any fines which became payable on the purchase (*g*).

[322]

Waiver of admittance by the heir.

It has been repeatedly observed, that a fine is not due till admission, and it follows, inevitably, that when a tenant waives admittance no fine can be due. But it has been doubted by some, whether the heir could waive the possession, yet such doubt does not appear well founded; but, on the contrary, it is now acknowledged, that he *may*

(*f*) 3 Lev. 261. *Shuttleworth v. Garn*
S. C. 1 Show. 35. S. C. So of *Relief*
147. s. *Fitzh. Avowrie*, pl. 233. 3 Co
Heriot. See post. chap. on *Heriots*. F
233. Also of *Rent*. 1 Roll. Abr. 374. *Ch*
(*g*) 1 Rolle's Abr. 374. *Chancerie* (P)
Finch.

sion, and consequently not be subject to
ne (h).

We come now to the third class of fines
able by copyholders;—those which are
on licenses by the lord to empower
tenant to do certain acts; as to de-
e, &c.

Fines due on
licenses to
alien, &c.

There is little to be observed on this
d; such fines being rarely due. It is
l down, however, that there must be a
cial custom proved to support the claim
such fine; for, by general custom, fines
due only on admissions (i). But if such
ustom exist, debt will lie for its reco-
y (k). In the case of *Yasley v. Rainer* (k),
fine was for *license to aliene*; and there
an express provision in the statute 12
r. 2. (l) to prevent the abolition of any [333]

h) See *Watk. Gibb. Ten.* 293. and No. cxli. p. 462.

Cur. 1719. 2 *Atk.* 449. and 3 *P. Wms.* 151. and
Siderf. 58. in *Wheeler v. Honour*.

h. s. 56. p. 127.

Raym. 44. *Yasley v. Rainer*.

6.

finer for alienation, due by par
toms of particular manors and
than fines for alienations of la
ments holden immediately of
capite.

CHAP. VIII.

OF FORFEITURE.

[324]
AS the copyholder originally held strictly Nature of.
at the will of the lord, and is still regarded
by the law as holding at will in cases where
the custom of the manor has not restricted
that will and protected the estate of the
copyholder, so, if the copyholder does any
act incompatible with the relation in which
he stands as tenant, if he denies his depen-
dency, or refuses to comply with the terms
of the grant, the law deems it a deter-
mination of the will by which he holds;
and the estate shall return to the lord who
granted it.

The copyholder, indeed, is not now de-
pendent upon the caprice of his lord; the
law and the custom of the particular manor
of which he holds, have now, in many re-

spects, protected and established his estate. But then he can only claim the protection of custom while he complies with its dictates. If he regulates not his conduct by the rules which that custom has prescribed, he is not entitled to its favour. If he transgresses the customs of the manor, the lords of the manor can no longer protect his estate. While he performs his duties and returns and fulfils the duties of a copyholder, the law interposes in his behalf and controls the will of his lord; but if he cannot countenance him in doing what he obeys not the law, the law must withhold its protection.

What acts
shall amount
to a forfeiture.

We will, therefore, inquire into what acts of the copyholder will be deemed a transgression of the will by which he holds, and what shall amount to a forfeiture of his estate.

But before we proceed we must observe that such acts of the tenant must, of the very nature of the thing, be *wrong* and that the will to be determined is *of the lord*; for should the tenant hold by *his own will* to hold, by any right

would indeed be a relinquishment or extinguishment of the tenancy; but it would be wholly different from *forfeiture* at law.

If a copyholder be attainted of treason or felony, his copyhold is immediately forfeited to the lord (*m*). And this not only as a punishment for his crime, but because his capacity to fill the tenancy is at an end. On attainder he becomes dead in law; and he cannot continue his estate after he has forfeited his existence. And in the cases of corruption of blood he can have no one to inherit his estate, where custom had made it hereditary. In some manors (*n*), indeed, this corruption does not take place; but, though the father be attainted, the son shall succeed.

Treason
or felony.

[326]

If the copyholder be outlawed for a capital crime, the same reasoning seems to apply (*o*). Till the outlawry be reversed, he

Outlawry.

(*m*) *Hawk. P. C.* b. 2. c. 49. s. 7. and the books there referred to.

(*n*) See *Robins. Gav.* b. 2. c. 4. and *infra*, Append. No. I. *Customs of Dymock*, co. Gloc.

(*o*) See *Gilb. Ten.* 242. *Watk. Ed.*

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Alienation.

even if it be to commence *in futuro* (*t*) ; it [327
will be a forfeiture of his tenement. So if

shall enjoy for another year, &c.
30. [A lease granted by a copy-
holder, a cause of forfeiture,—on
1. Demise by a copyholder for one
year from year to year, for the term
of years, if *the lord would give license, and*
no forfeiture : held that the license
was a condition precedent to the
lease for term of thirteen years, and not
otherwise is no lease at law further than
4 *East*, 221. *Doe d. Nunn v.*
11 *Ves.* 170. *Lufkin v. Nunn*. So
if a lease of a copyhold for 21
years of the lord could be obtained, and
if, until such license could be had,
the lessee peaceably and quietly
enjoyed the premises, has been held not to
be a forfeiture than one year, and consequently
no forfeiture. 2 *Taunt.* 52. *Doe d. Wood*
: of freehold and copyhold lands at
the end of, so much as freehold for 21
years as copyhold for three years, (a de-
t being warranted by the custom,) a
renewal of the lease of the copyhold
toties quoties, during the 21 years,
rents; and that in the mean time,
leases should be executed, the lessee
of land, as well copyhold as freehold,

he exceed his license ; as if he have a license to demise for two years, and he demise for three ; or if his license be not in other respects pursued (*u*).

But a common-law interest must actually pass in order to work a forfeiture. For if the copyholder execute a deed of feoffment,

&c. : held that this was only a lease of the copyhold for three years, and that the lessor might, after the three years, recover the premises in ejectment against the lessee, there not having been any fresh lease granted. 2 *Maule & Selwyn*, 255. *Fenny d. Eastham, wid. v. Child*. And see further as to a covenant or promise to demise, *infra*, p. [328], and the books there cited.] Three leases for a year each, &c. to the same person, and all made at one time, deemed *one conveyance and one term*. See *Cro. Car.* 233. *Matthews v. Whetton*. Of proof of lease, &c. see 1 *Bulst.* 189. *Hamlen v. Hamlen*. [Custom to lease for 31 years without license, good. 1 *Salk.* 185. 1 *Show.* 284.] Instances of leases being made for 40 years, no proof of custom. See *Cro. Eliz.* 351. *Jackman v. Hoddeson*.

(*s*) *Moore*, 393. *East v. Harding*. *Cro. Eliz.* 498. S. C. *Ibid.* 351. *Jackman v. Hoddeson*. And whether the lessee enter or not. *Moore*, 392. *East v. Harding*.

(*t*) *East & Harding, ubi sup.*

(*u*) *Cro. Eliz.* 395. *Jackson & Neal*.

but make no livery, he shall not forfeit (*w*):
or if, on such feoffment, he even make a
letter of attorney to give seisin, it should seem,
according to the better opinion, to be no for-
feiture actually made (*x*).

As to a bargain and sale, though
such bargain and sale be regularly enrolled,
the tenant will incur (*y*). For a bar-
gain and sale can only pass what the bar-
gain and sale has right to convey. Now the co-
tenant, being only a tenant at will, can
convey nothing by right; and a bargain and
sale operates by wrong, as a feoff-
ment does, and work no discontinuance at
all; and, consequently, as it can
convey nothing, either by wrong or by
right, nothing can be conveyed: and, conse-
quently, no interest can pass at all; and,
therefore, no forfeiture can be effected.
A bargain and sale only passes an
estate, operating upon such

[328]

1. a.

2. *Litt.* 59. a.

255. and *Watk.* cxviii. p. 451.

consequence of a lease (which is in truth a
lease and release. As no use arises by the

FORFEITURE

copyholder for life surrender the lord to the use of another be no forfeiture (*b*). For a bargain and sale, can only person making it may lawfully besides, even on the supposition *would* pass the fee, fee of the *copyhold* interest, state at common law; which [32] before remarked, to work a surrender too is made with the word, or, which is the same reward; and if the lord accept a fee from the copyholder for the appointee accordingly, it act.

if the copyholder for life suffers in the manor court, it will be a forfeiture of his life estate, without compensation; as the lord is party to a bargain and sale, unless the estate recovered can be proved to be a copyhold, and not a common-law

Oldcot v. Levell. 4 Co. 23. a.

b. [52]. [98].

estate, and therefore the c
denied (d).

Denial or
refusal of
services, &c.

Another cause of forfeiture
or refusal of services. For
by denying or refusing l
breaks the condition by whi
such case the consideration
consequence, the lord is en
his grant.

If the tenant in open c
claims being tenant to the lo
that he owes him no services
ly refuses rendering any ;
acts of forfeiture (e).

[330] So if, when in court,
sworn on the homage (f
sworn, he refuse to present

(d) See *Gilb. Ten.* 235. & *M*
2 *Mod.* 32. *Keen v. Kirby.*

(e) See *Kitch.* 124. b. *M.* 42
Co. Copyh. s. 57. *Tr.* 132.

(f) *Co. Copyh.* s. 57. *Tr.* 132.

a *personal* (*h*) summons, he
suits, without alleging a suf-
a forfeiture shall be in-

e not in to be admitted on
n, it will be a forfeiture,
or absolute, according to
Or if, on admittance, he
d).

observe that the refusal of
e a wilful and absolute re-
ause of forfeiture (*m*) : for if

57. *Tr.* 132. *Moore*, 350. pl. 468.
Christopher Hatton's case, and *Sir*
ston, cited.

summons, as at the church, &c. is
. *Eliz.* 505. *Crisp & Fryer*, and
tton's case, cited. *Godb.* 142. *ca.*

& *Harleston*, and *Winter's case*,
. 507. *Copyh.* (C) pl. 7, 8, 9. See
l. Branche's case, and 3 *Bulst.* 80.
Gillb. Ten. 229, 230.

yh. 1. 57. 1 *Leon.* 104. *Sir J.*

7]. [234], &c.

5]. [319].

ca. 176. and *Winter's case*, cited.

510

[331]

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Waste.

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He is, therefore, contrary to other tenants at will, or at least to those who hold strictly at will a common-law estate (*r*), answerable for permissive as well as for voluntary waste (*s*).

Thus if a copyholder pull down a house (*t*), or suffer it to become ruinous for want of timely reparation (*u*); if he build a new one (*w*); *a fortiori*, if he pull the new house down again (*x*), he shall forfeit his tenement.

[332]

8 Co. 63.. *Swayne's case*. See also 13 Co. 67. *Heydon v. Smith*, (3d point.) 1 *Roll. Abr.* 508. *Copyh.* (D) pl. 18. *East v. Harding*

(*r*) *Litt. s.* 71. and *Co. Litt.* 57. a.

(*s*) See *Co. Litt.* 63. a. and *Harg. N.* (1). *Co. Copyh. s.* 57. *Tr.* 134-5. 1 *Salk.* 186. *Eastcourt & Weeks. Owen*, 17-18. Waste is sometimes only punishable by fine. *Vide* Append. No. II. *Customs of Yetminster prima, Co. Dorset.*

(*t*) 1 *Bulst.* 50. *Brocke v. Beare.*

(*u*) *Co. Copyh. s.* 57. *Tr.* 134-5. [A mortgagee of a copyhold may pull down ruinous houses and build much better. The lord has a right to say that the tenant should not let the houses fall; and might seize if he did. *Per the Master of the Rolls*, in *Hardy v. Reeves*, 4 *Ves.* 466.]

(*w*) See *Watk. Gilb. Ten.* 235, and *N.* (C.)

(*x*) *Ibid.* and see 1 *Bulst.* 50. *Brocke v. Beare.*

So if by 1
become usel
the banks t
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land into ho
like ; it will

So if he 1
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ranted by 1

(y) *Co. Cop.*

(z) See *Lit*

Hutt. 102. *S.*

Gillb. Ten. 236

(a) *Ante*, p.

(b) 1 *Roll.*

Terry. 1 *Lo*

2 *Durnf. & 1*

Brocke v. Bea

1 *Leon.* 272.

them pollards

Somerset.] *Ci*

timber, bad.

Mardiner v. E

by custom. 8

copyholder in

his will. 1 *I*

Dal. 8. *Noy,*

timber for botes, he may sell the tops and
mark towards defraying the charge of repa-

he names his successor; for he has *quasi* an inheritance. 1 *Roll. Abr.* 560. l. 35. 1 *Brow.* 133. 2 *Brow.* 7. *Noy*, 2. But a copyholder for life, merely, cannot cut down and sell; and a custom that a copyholder not having any further interest than for life, may cut down trees at his will and sell them, is void. 1 *Roll. Abr.* 560. l. 30. 1 *Bulstr.* 158. 3 *Bulstr.* 81. *Cro. Car.* 21. 2 *Brow.* 85. *Noy*, 2. *Jon.* 245. So if a copyhold be granted to a man and his heirs for three lives, but he has no power of compelling the lord to renew on the falling in of the lives, he cannot cut the timber growing on the estate. 2 *Durnf. & East*, 746. *Mardiner v. Elliott*. Where there is not a special custom for the copyholder to cut, the lord may cut, and the copyholder has no remedy against him, though he be copyholder for life, and pleads that he has not sufficient for repairs. *R. contra*, in B. R. and Excheq. but reversed in the House of Lords. 2 *Salk.* 638. 1 *Lord Raym.* 551. The customs of different manors vary exceedingly; sometimes they give the timber to the lord, sometimes to the tenant. The court of King's Bench once said no custom could give it to the tenant. A great deal of doubt has always been entertained upon that point. Custom makes every thing in a copyhold." *Per* the Lord Chancellor, in *Dench v. Bampton*, 4 *Ves.* 700. Lord and tenant may by custom be possessed of a joint interest in trees, *ibid.* It should seem also, that where the property is solely in the lord, he may yet

ration (c). So, as he may not
the quantity which may be 1

not have a right to enter and take it
of the tenant. See 17 *Ves.* 282. and *sup*
The lord of a manor has no right to ent
of inheritance and cut timber for his
sufficient for botes and estovers, if the
in the manor authorizing him to do
Selw. 340. *Whitechurch v. Holworthy*.
213. Where a copyholder of inheritan
by custom to cut timber surrendered t
will, and devised to A. for life, without
waste, with remainders over; and A. u
possession cut down timber: though
instance, in fact, of a copyholder for li
cutting timber, yet it was held that
annexed to the fee and inheritance, th
fee in carving out his estate, may ma
life dispunishable of waste: and that
lord cannot enter upon the copyholder
as for a forfeiture upon his cutting
injury, if any, is not to the lord, but to
man of the inheritance. 10 *East*, 266.
v. Johnson]. Custom for copyholder
tops. See *Moore*, 546. *Stebbing v. G*
the lord cut down trees, where by co
holder shall have the lops, an action up
against him. 1 *Roll. Abr.* 108. *Ibid.* 179
And see further as to the rights of lord
regard to timber. *Gillb. Ten.* p. 237. & 24
(c) 3 *Bulstr.* 281. *Sanford & Steven*

will be warranted in felling what may appear to be requisite; and may keep the overplus for future use(*d*). But if he suffer timber, [333] felled under the pretence of estovers, to decay and become useless(*e*); or apply it towards the reparation of other tenements(*f*), it will be a forfeiture at law *.

(*d*) See 1 *Roll. Abr.* 508. *Copyh.* (D). pl. 19. and *Cro. Eliz.* 498. *East & Harding*. [And see *Moore*, 508. S. C. adjudged, though employed five years after cut down, and after an entry as for a forfeiture. Where a copyholder for life cut trees, though none were applied to the repair of the premises till several months after, and after ejectment brought as for a forfeiture, and most of them still remained unapplied, but parts of the premises were still out of repair: adjudged to be a question for the jury, whether they were cut *bond fide* for the purpose of repair, and were in a course of application for that purpose: and there being no evidence that they were about to be applied to any other purpose, the court refused to set aside a verdict for the defendant. 11 *East*, 56. *Doe d. Foley v. Wilson*.]

(*e*) 1 *Roll. Abr.* 508. *Copyh.* (D) pl. 20. [*Moore*, 392. S. P. *per Cur.*]

(*f*) See 2 *Vern.* 537. *Nash v. Com. Derby*.

* But if a person have two copyhold tenements held of the manor, and he cut down timber on one to repair the buildings, &c. of the other, a court of equity will relieve. See 2 *Vern.* 537. *Nash v. Com. Derby*. 1 *Stra.* 450. *Preced. Chanc. S. C.* And see 1 *Bro.*

So a copyholder may forfeit by abating ancient enclosures ; or by enclosing where no enclosure was before (*i*). So, by abating, removing, or confounding landmarks (*h*).

a waste within the said manor, for making and repairing grass plots in such gardens, or for making and repairing the banks and mounds of the hedges and fences of such customary estates, is bad ; as being indefinite and uncertain, and destructive of the common. 7 *East*, 121. *Wilson v. Willes*.]

(*i*) See *Preced. in Chanc.* 568. *Sir H. Peachy v. Duke of Somerset*. 1 *Strange*, 447. S. C. *Vin. Copyh.* 113. (D. c.) pl. 9. S. C. *Hutt.* 102. *Paston v. Utbert*. *Litt.* 264. S. C. and *Hettl.* 5. S. C. by the name of *Paston & Mann*.

(*h*) See the books referred to in (*i*). Lord may bring his bill of discovery in case of confusion of boundaries. 2 *Atk.* 449. *Clayton v. Cooke*. [And upon such bill the Court of Chancery will order a commission to issue to distinguish copyhold lands within the manor from freehold, and compounded from uncompounded copyholds, and to ascertain the boundaries : and if they cannot be distinguished, to set out lands of the tenant of equal value with so much of the copyhold lands as cannot be distinguished. 4 *Ves.* 180. *The Duke of Leeds v. The Earl of Strafford*. And per the Lord Chancellor,—It is the duty of tenant to keep the boundaries. That is the foundation of the bill. The confusion of boundaries does not infer any negligence on the part of the lord ; for the tenant is in possession of the land. *Ibid.* And see further as to a commission for ascertaining and dis-

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Tearing the
rolls, &c.

[334]

If the same person holds several acres of land of the same manor by several tenures, as *Black-acre* by the rent of three-pence, and *White-acre* by the rent of four-pence, and *Green-acre* by the rent of six-pence, and commits waste in part of *Black-acre*, or makes a feoffment of part of *Black-acre*, or denies the rent of that acre; he shall forfeit the whole of *Black-acre*; but it shall be no forfeiture of *White* or of *Green-acre*. For, although they are all held by the same person, and perhaps included in the same copy, yet every acre is severally held; and to every acre there is a several condition in law *tacite* annexed; and, therefore, the forfeiture of one cannot be the forfeiture of any of the others (*n*). What shall be forfeited.

But though any act of the copyholder which is confined to one tenement, cannot be the cause of forfeiture as to the others, yet it should seem that any such act which is confined to *part* of the single tenement [335]

322. b. S. C. And note, such forgery is expressly within the stat. 5 *Eliz.* c. 14. s. 2.

(*n*) 4 Co. 27. a. *Taverner & Cromwell.*

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broken the reciprocal obligation, and shewn [336]
himself unworthy of the confidence reposed
in him.

The act of the particular tenant shall not be
a forfeiture of any remainders over (f), though
such remainders be contingent (u); nor shall
it be a forfeiture of a reversion (w).

If a copyholder lease by license of the
lord, and the lessee make a feoffment, the
term of years only shall be forfeited, and
not the estate of the copyholder (x). So, if,
after such lease by license, the copyholder
commit any act of forfeiture, the lease shall

(f) 1 *Roll. Abr.* 509. *Copyh.* (F). and *ibid.* 568.
Customs (G). pl. 5. *Baspool v. Long. Cro. Eliz.*
879. S. C. *Redsal v. Lacon*, there cited. *Co. Copyh.*
s. 59. *Tr.* 138. *Gilb. Ten.* 244, &c. and *Watk.* No. cvii.
Unless there be a special custom. See 9 *Co.* 107. a.
and *quære*.

(u) See *ante*, ch. 5. p. [194], &c.

(w) *Co. Copyh.* s. 59. *Tr.* 138.

(x) 1 *Roll. Abr.* 509. (F). pl. 4. cites *White & Hunt*,
as so adjudged.

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this opinion does not seem law (*c*): for the person admitted was as much tenant to the lord before the release as afterwards; and the lord ought not to be injured by the private agreement of the parties.

A person *non sanæ memoriæ*, an idiot, or lunatic, are incapable of forfeiting (*d*). So of an infant under the age of discretion (*e*). Who may
forfeit.

But an infant above the age of discretion, and under that of twenty-one years, shall forfeit, if he does any act to the disherison of the lord. If he does voluntary waste, or wilfully refuses his services; if he commits treason or felony; he shall forfeit his lands (*f*).

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But if he make a lease for years without

(*e*) See *Watk. N. cviii. to Gilb. Ten.* 445.

(*d*) *Co. Copyh. s. 59. Tr.* 136.

(*e*) *Ibid.* A trustee may forfeit. See *Preced. in Chanc.* 573. 1 *Strange*, 454.

(*f*) *Ibid.* and see the case of *Sir H. Peachy v. Duke of Somerset*, *Prec. Chanc.* 568. 1 *Str.* 447, &c.

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the wife shall be forfeited. But if he make [339]
 a lease unwarranted by custom without license,
 it is said it will not be a forfeiture, at least
 not after his death, unless the wife do any
 thing to affirm it (q). So, if the husband
 commit felony or treason, it should seem that
 it would be no forfeiture of the wife's estate;
 as he could only forfeit what he had in him-
 self (r).

But if a stranger commit waste without
 the consent of the husband, it is said to be
 no forfeiture, though the wife consent (s).
 Yet it should seem, from later authorities,
 that, at least in other cases, a forfeiture shall
 incur by reason of the act of a stranger; and
 the copyholder must have his remedy over
 against him (t).

(q) 1 *Roll. Abr.* 509. *Copyh.* (F). pl. 5. and the
 books cited in 6 *Vin.* 140. *Copyh.* (S. c.) pl. 5. and
Hedd v. Chalener, *ubi sup.* *Cro. Car.* 7. *Saverne &*
Smith.

(r) See *Staundf. P. C.* 187. b.

(s) *Co. Copyh.* s. 59. *Tr.* 137. 4 *Co.* 27. a. *Clifton*
& Molineaux.

(t) See *Watk. Gilb. Ten.* 235. N. (d).

But equity may relieve. See *Totk.* 237-8. *Taylor*
& Hooe, and cited in 6 *Vin.* 152. *Copyh.* (E. d.) pl. 2.

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[340]

Who shall
take advan-
tage of a for-
feiture.

nature of the thing, that it must be the lord who is entitled to enter.

Even in the case of treason, therefore, the lord, and not the king, shall have the copyholds of the person attainted; unless, indeed, such copyholds be *expressly* given to the king by a particular act of parliament. But they shall not be forfeited to the king by the general words of a statute (*y*), by reason of the manifest injury which would accrue to the lord; as the king could not hold them, if forfeited, as a copyholder, and consequently the tenure, and all the fruits of that tenure, would be lost, or at least suspended (*z*). [341]

And so if a copyhold be granted to *A.* for life with remainder to *B.*; and *A.* commit a forfeiture; the lord shall take advantage of it, and not *B.* For by *A.*'s act, the tenancy, as to him, became extinguished or destroyed; and, consequently, the lord became entitled

(*y*) See 2 *Vent.* 38. *Lord Cornwallis's case.*

(*z*) *Ante*, ch. 2. p. [31].

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commence on the forfeiture or determination of *A.*'s estate, though the lord, from the very nature of the thing, would be equally entitled to the estate forfeited, yet he should not be suffered to retain it contrary to the express words of his grant (*c*).

We will now, therefore, proceed to inquire, who may be such a lord as to be capable of entering for a forfeiture?

And here we may observe, generally, that any one who is *dominus pro tempore* may take advantage of a forfeiture committed within his own time (*d*).

And a person shall sometimes take advantage of a forfeiture who was not, properly, a lord at the time, nor at any time afterwards; as the grantee of the freehold of the copyhold, or his lessee: for by the grant, the premises were severed from the manor; and

(*c*) 3 *Lea* 94. *Strode v. Dennison*. *Watk. N.* (*h*) to *Gilb. Ten.* 173.

(*d*) See *Roll. Abr. Copyh.* (*G*). *Comyns's Dig. Copyh.* (*M. 6.*) and *Viz. Copyh.* (*T. 6.*) &c.

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Thus, if there be tenant for life of a manor with remainder over to a stranger in fee, and a copyholder commit waste, and then the tenant for life die before entry; he in remainder may, it is said, enter; for he had an interest in the manor at the time of the forfeiture committed, though he could not enter by reason of the estate in the tenant for life; but which being determined, his entry is now accrued for the forfeiture committed in the life of the tenant for life (g).

[344]

If the act of forfeiture be such as to work a disinherison to the lord, as if the estate be destroyed, as in case of feoffment, fine or recovery, the heir of the lord in whose time it occurred shall take advantage of it: but not otherwise (h).

And as to the alienee, grantee, or lessee of the manor, it should seem that he cannot take advantage of a forfeiture which accrued

(g) *Co. Copyh.* s. 60. *Tr.* 139. but see *Cro. Jac.* 301. *Lady Montagu's case*, *contra*.

(h) See 3 *Durnf. & East*, 162. *Doe d. Tarrant v. Hellier*, *Freem.* 516. *Ca.* 692.

before his own time, even in the case of dis-
herison (i).

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But if a copyholder, holding of a manor belonging to a bishoprick, commit a forfeiture, as by felling timber, during the vacancy of the see, the succeeding bishop may bring ejectment (k). This case, however, differs from the preceding: in those there was a lord at the time of the forfeiture who might have taken advantage of it if he pleased; but, in the present case, there was no one to whom losses could be imputed.

If there be several coparceners of a manor, and a forfeiture incur, and one die before

(i) *Co. Copyh.* s. 60. *Tr.* 139. 2 *Vent.* 38, 39. *Lord Cornwallis's* case. But it should seem that the lord ought to have known of the cause of forfeiture. In *Owen*, 63. *Penn & Mericall*, the copyholder made a lease and the lord made a feoffment, and the feoffment was considered as an assent that the lessee should continue his estate; and so was in the nature of an *affirmance* and *confirmation* of the lease. Now does it not seem necessary that the lord should know of his lease before he can be supposed to affirm it?

(k) *Bull. Nisi Prius*, 107. *Read v. Allen*, cited.

entry, the others, it is said, cannot enter (l). So when the cause of forfeiture descends to coparceners, they must all agree as to taking the advantage of the forfeiture, or one alone shall not be permitted to enter: so if one die, the other cannot seize (m).

Whatever may be the act of the copyholder, yet, in order to remove the estate out of him, the lord must actually avail himself of the forfeiture by seizing into his hands (n) the tenements forfeited, by the entry (o) of himself, or agent, as his bailiff,

How and at what time a forfeiture is to be taken advantage of.

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(l) See 1 *Freem.* 516. ca. 692.

(m) *Ibid.* and 1 *Salk.* 186. *Eastcourt & Weeks.*

(n) *Gilb. Ten.* 247. 2 *Show. Rep.* 152. *Benson & Strode.* 3 *Durnf. & East*, 173. *Doe d. Tarrant v. Hellier.* But if the copyholder commit a forfeiture, the lord may grant the copyhold before seizure. See 1 *Lev.* 26. *Milifax v. Baker*, and see *Dyer*, 145. b. pl. 66. *Bull. N. P.* 107. But he cannot enter for waste done before presentment. 4 *Ves.* 707. *Dench v. Bampton.* See *Cre. Eliz.* 499. *contra.* Of the relation to the cause of forfeiture, see *Milifax & Baker*, *ubi sup.* and 2 *Hawk. P. C.* ch. 49. s. 30. 32.

(o) In the case of *Tarrant & Hellier*, (3 *Durnf. & East*, 172-3.) the court seemed to think that the lord could not enter for a forfeiture after twenty years.

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If a person, therefore, be attainted of treason or felony, the lord may seize without any presentment by the homage; since the commission of the offence is ascertained and made of publicity by his conviction in a court of law (*t*).

So if the forfeiture be in consequence of any act or refusal in the presence of the lord, as in open court, no presentment can be requisite; as the end of presentment is already answered. Thus if proclamation be made for an heir to claim, and no claim be made: if a copyholder be personally warned to do suit at a particular court, and he does it not; or if he appear in court and openly and absolutely refuse to be [347]

(*t*) *Benison & Strode, ubi sup. 2 Vent. 38. Lord Cornwallis's case.* The lord may also take advantage of a forfeiture for cutting timber before any presentment. *Cro. Eliz. 499. East v. Harding.* And he need not prove presentment or seizure on ejectment being brought. See *Bull. N. P. 107.* And note, if the lord need not prove seizure, may not a suit to set out boundaries be often dispensed with, by bringing ejectment, and on a writ of execution being awarded, the sheriff summoning a jury to ascertain the property as on a *fieri facias*? C. W.

[348]

If a copyholder commit treason or felony, and be attainted, the lord may seize, we have seen, without any presentment. In this case the fact is ascertained and notorious. But the lord, it is said, is not justified in seizing before attainder without a special custom empowering him so to do; as it would be unreasonable and inconvenient to permit a capital crime to be tried or controverted in a civil action before the conviction appeared upon record (x).

If the commission of such crime be presented by the homage before the supposed offender be regularly convicted by due course of law, and the lord, in consequence, seize, as authorized by such special custom, and afterwards the tenant be legally acquitted, the forfeiture shall be discharged (y): and so also, it is said, if, after conviction, *he have his clergy* (z).

(x) 2 *Vent.* 38. *Lord Cornwallis's case.* 2 *Hawk.* P. C. ch. 49. s. 7.

(y) See *Godb.* 267. *Paginton & Huet.* 2 *Keb.* 466-7. *Jory & Pawly.*

(z) See 2 *Keb.* 446-7. *Jory & Pawly.* 1 *Lev.* 263. S. C. But if there be a custom to seize on conviction, the

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· FORFEITURE.

We have already observed, that although the copyholder commit any act which may be the cause of forfeiture, yet the estate is not out of him till the lord actually seize. If the lord, therefore, exert not his right; does not insist on and absolutely avail himself of the forfeiture, the copyholder will still remain tenant of the premises. The lord, if he pleases, may waive the forfeiture: and if he does any thing which may amount to an acknowledgment of an existing tenancy,

down by the tenant: could the lord bring an action of waste? I apprehend there can be no action of waste between the lord and tenant. The lord can get no more than the forfeiture. — — The law settles the matter between the lord and the tenant. If by committing waste a forfeiture is incurred, the lord proceeds for the forfeiture; and it is a question at law whether the act done is a forfeiture or not." *Ibid.* But see *contra* 3 Meriv. 673. *Richards v. Noble*, where it was held, that the lord of a manor is entitled to injunction and account in respect of waste by a copyholder: the Lord Chancellor remarking, that in many cases the forfeiture was a very inadequate remedy; and noticing the instance of a barren spot upon which many valuable timber trees grow. If the copyhold tenant by cutting down these trees only forfeited his copyhold, he might in such case be a considerable gainer by his own wrongful conduct.]

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**Who may
dispense.**

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Notice.

**What acts
may be dis-
pensed with.**

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Edward Coke (f), that some make a difference between those forfeitures which tend to the destruction of the copyhold, and those which do not: as if the copyholder make a feoffment; "by this the copyhold is destroyed; and, therefore, no subsequent acknowledgment of the lord," says he, "will ever solve this sore."

A feoffment operates immediately by livery, and works a disseisin. It binds even the lord till it be defeated by an act of equal notoriety. But it has been determined (g) that a fine levied by a copyholder may be waved as the cause of forfeiture, as *the fine would be void against the lord, the copyholder continuing in possession.* These cases, therefore, essentially differ.

[541]

If a copyholder be attainted of treason or felony, perhaps no dispensation could take place. By the attainder the tenancy is absolutely at an end; and the copyholder is

(f) Co. Copyh. c. 61.

(g) 2 Dumf. & East, 162, Doe & Tarnant v. Hellier.

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What shall
be a dispen-
sation.

FORFEITURE.

So if he admit him after forfeiture (*l*): if he accept a surrender from him*, or rent (*m*), or other services (*n*); if he amerce him for default of service (*o*); or distrain on the lands for rent (*p*); it shall be a dispensation of the forfeiture.

If a copyholder does any act which would be a forfeiture at law, he shall, in certain cases, find relief in equity, and the lord be prevented from taking advantage of such act.

But equity will not relieve against a voluntary act; nor unless a compensation can be made to the lord (*q*).

(*l*) *Ibid.* 1 *Lev.* 26. *Milfay v. Baker.*

* 1 *Freem.* 517.

(*m*) 1 *Salk.* 186. *Eastcourt & Weeks.* 1 *Keb.* 15. *Garrard & Lyster.* *P. Twiden.* See *Gilb. Ten.* 334. 1 *Freem.* 517. But acceptance of rent was said in *Doc d. Tarrant v. Hellier*, (3 *Durnf. & East*, 171.) to be of an ambiguous nature, and not of itself a dispensation.

(*n*) See *Gilb. Ten.* 247-8.

(*o*) 1 *Leon.* 104. *Sir John Braunch's case.* 1 *Freem.* 517.

(*p*) *Co. Copyh.* s. 61.

(*q*) *Preced. in Chanc.* 568. *Sir H. Peachy v. Duke of Somerset.* *Str.* 447. *S. C.* 6 *Vin.* 113. (D. c.) pl. 9. *S. C.* 2 *Freem.* 137. c. 170. *Bishop of Worcester v. —.* And see as to relief, 4 *Ves.* 704-5.

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CHAP. IX.

OF EXTINGUISHMENT AND SUSPENSION.

WHEN a freehold and a copyhold interest ⁱⁿ in the same premises unite in the same person and in the same right, the copyhold interest becomes extinguished; but if they are vested in the same person in different rights, the copyhold interest is suspended only.

And, first, in order to effect an extinguishment, "the freehold and copyhold interests (w) must be of *the same premises*:" ^{The and inter be o same} for if *A.* be tenant by copy of *White Acre*,

(w) A copyholder may be the *bailiff* of the manor; for a bailiff has no interest; and, consequently, the copyhold would not be extinguished. See *Cro. Jac.* 84. & 167. in *Gybson & Searl*.

But they
need not be
commensu-
rate nor con-
fined to the
same premises.

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Lease for
years.

hold interest shall be extinguished for ever (x).

Again, if a copyholder in fee in possession purchase the reversion of the manor, it will be a present extinguishment; and the particular tenant of the manor may enter into the copyhold premises immediately on the transfer of the reversion (a). Reversion.

If a copyholder be seised in tail and take a grant of the manor, the copyhold interest, though in tail, will be extinguished: for when the interest of the lord of the manor is united with the copyhold in tail, there must be a merger (b). Estate tail.

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And whenever the interests become united, the extinguishment is complete; and although the estate of freehold be defeated, Defeasible estate.

(x) *Hutt.* 65. *Blemmerhasset v. Humberstone.* Sir *W. Jones*, 41. *S. C. Godb.* 101. ca. 117. and see *N. (4).* to *Co. Litt.* 59. a. *Hale's MSS.*

(a) *Calk.* 97.

(b) 2 *Ves. Jun.* 525. *Challoner v. Murhall*, and *ante*, ch. 4. p. [336]. *Of Entails.*

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**Lease of the
whole manor.**

Joint-tenancy.

**The interests
must be united
in the same
person ;**

EXTINGUISHMENT, &c.

erson :” for while they continue
extinguishment can take place.

efore, hold one hundred acres
the lord grant the freehold of
B. the interest of A. will not [357
uence extinguished (*f*), though
fed to the use of A. (*g*).

afterwards convey the freehold
inguishment would be effected ;
ts would be no longer distinct (*h*).
yholder release to the grantee of

old be granted to A., B., and C.
e. to A. for life, remainder to
emainder to C. for life, and A.
f the lands by deed, it will, it
only an extinguishment of *his*

b. *Murrell & Smith*.

573. *Waldoe v. Bartlet*. *Hob.* 181.
tlet. 2 *Roll. Rep.* 178. *Walker v.*
t. [364]. (2).

1. *Lane's case*.

. *Waterford's case*.

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EXTING

an extinguishment
to the lord ; for the
or reserved to the
destroyed (m).

Thirdly, " The i
the same person i
otherwise the copy
ended only.

If, therefore, a
interest in his own
terest either in the
the manor generally
or *vice versâ*, the
only suspended whil
in the same person.

Thus, if a copyh
nioress, the copyho
during coverture (n).

So if the lord i
the copyhold tenur

(m) See *Co. Copyh.*

(n) *Co. Copyh.* s. 6:

ca. 1. anon.

How the in-
terests may
be united.

By the copy-
hold coming
to the lord.
As by release,
surrender, &c.

For so soon as the relinquishment is effected, so soon must the copyhold interest be at an end; as a person cannot hold of himself, and be at one and the same time both tenant and lord *.

* [And if the surrender be made to the lord and his heirs, the premises, in regard to which the copyhold interest is thus extinguished, will pass under a previous devise of the manor; and that notwithstanding a subsequent demise by the devisor from year to year. See *6 Durnf. & East*, 708. *Ree d. Hale v. Wegg*. And in *Doe d. Gibbons v. Potts*. *Dougl.* 710. 8vo. ed. it was held, that copyhold lands purchased by the lord after a mortgage of the manor in fee, and the surrender taken to the mortgagor and his heirs, should enure to the benefit of the mortgagee as parcel of the manor, and that the equity of redemption passed under a settlement by the lord of all his estate mortgaged. So if a lord, tenant for life of a manor, with remainders over, purchase a copyhold interest and take a surrender thereof to him and his heirs, such copyhold interest will merge, and as parcel of the manor be subject to the previous limitations thereof: and though under a subsequent covenant by the purchaser to surrender such copyhold interest by way of mortgage, the mortgagee might compel a re-grant by the remainder-man; yet, in case of no such re-grant having been made, the general devisees of the purchaser have no equity. *15 Ves.* 167. *St. Paul v. Visc. Dudley & Ward.*]

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Forfeiture	(
or escheat.)
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	:
	:

By the free-
hold coming
to the copy-
holder.

Observation.

the copyhold will be extinguished for ever. But this mode of expression is inaccurate. The copyhold was equally extinguished before as after the lease. It was extinguished by the very act of escheating*. The moment it fell into the manor the extinguishment was completed. The lease by deed, would, it is true, prevent the lands from being ever granted by copy again : but the extinguishment was wholly independent of such event. The lease is a destruction of the demisable quality of the lands ; but it cannot operate as an extinguishment of that which had ceased to exist before the lease had a being. From the very instant the escheat took place the copyhold tenure was no more. A new grant by copy might have been made ; but the old one was utterly and absolutely at an end. We ought not, therefore, to say, that such a lease operates as an *extinguishment*, but as a *destruction of the demisable property in the lands*.

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* And see 2 *Siderf.* 19. (Finch.)

[362]

fixed.

veyance
the free-
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enfranchisement can, therefore, take place, as
: of the lord was already free.

is not essential that the conveyance
hold to the tenant be made *immedi-*
in the lord ; for if the lord convey
ld to a stranger, and the stranger
to the copyholder, the base tenure
stroyed (x).

rd, in order to enfranchise abso-
ust be enabled to convey the fee-

[363]
Who may
enfranchise.

the freehold interest ; for other-
will be only an extinguishment of
older's interest, and a suspension
misable property during the exist-
he estate so conveyed in the free-

, therefore, having only a partial
n the manor, cannot enfranchise in
can only communicate what he
lf ; and his act shall not injure
of others, any more than persons

(x) See *Lane's case*, 2 Co. 16. b.

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The convey-
ance must be
to the *tenant*.

[364]

RANCHISEMENT.

prejudice the copyholder's

yance of the freehold, the
vered from the manor, and,
must be held of the lord
the grantee convey the free-
the copyholder the copyhold
e extinct, as its existence
patible with the freehold in-
enures could not subsist to-
consequence, the less worthy
ie base would be absorbed in

that if the lord have only Tenant
t, he cannot enfranchise in a part
copyholder have only a par- interest
the premises, and he take

ie be there well reported. See *Lord*

be enfeoffed to the use of others,
served by the saving in the stat.
Co. 38. a. *Ised's* case cited as so

Murrel & Smith. Cro. Jac. 573.

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**The freehold
must be con-
veyed.**

ENFRANCHISEMENT.

When, therefore, it is intended to enfranchise a copyhold, such mode should be adopted as will convey the freehold of the premises: as a feoffment, bargain and sale, or the like. Though the release by the lord of the seigniorial rights, will equally effect an enfranchisement, as we shall presently see *.

Fourthly; The conveyance must be of the freehold "*of the particular and specific premises which were held by copy.*"

For if the *whole manor* descend or be conveyed to the copyholder, it will not be properly an enfranchisement of the copyhold, but an extinguishment of it; and the premises may be granted by copy again.

By the conveyance of the freehold of the specific lands, they become severed from the manor, but it is otherwise when the *whole manor* is conveyed. In the latter case the

* Grant of the freehold presumed after twenty years. See 1 Vern. 516-17. *Steward v. Bridger*. [The enfranchisement of a copyhold may, upon proper evidence, be presumed even against the crown. 11 East, 280. in *Humphrey v. Ireland*.]

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**Release by
the lord of
his seignorial
rights.**

[307]

ture, and not by copy ; and, of course, the releasee must now hold by ture also (*d*).

tenure was often changed by the releasee to the lord (*e*) : and, in the present case, the copyholder, being tenant at will to the lord, there was a privity between them ; consequently, the release of the lord to the copyholder would enlarge his estate and give him a freehold of the premises (*f*).

Let us now turn to the consideration of the consequences of enfranchisement.

Consequence
of enfranchisement.

Immediately on the lands being enfranchised, the fee, they become severed from the lord, and held of the lord above under a new tenure and services as the former lord held.

Separation
from the
manor.

See *Litt. s.* 146. and *Co. Litt.* 109. b. & c.

h. 49 *Ed.* 3. pl. 2. fol. 10. b. 2 *Inst.* 509. *Polk's 5th Reading on Fines.*

Litt. s. 460. *Co. Litt.* 270. b. and 13 *Co.* 55. case. [So words equivalent in substance to release, will operate as an enfranchisement. *271. Doe d. Resy v. Huntington & al.*]

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Tenure.

Services.

[368]

Customs.

Litt. l. 215.

ENFRANCHISEMENT.

custom be that the lands held descend to the youngest son, would no more attach. Since s, that all "*copyholds within*ould so descend. Now, on en- the premises are neither "*copy- within the manor*;" and, con- within the custom (*h*).

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ts and privileges annexed to Co's estate, as such, must also be the estate by copy to which has ceased to exist: thus if a common of pasture or estovers i copyhold, and the copyhold , the common is gone, since s gone in the right of which it As the estate is no longer even held of the manor, all

i of *Murrel & Smith*, (4 Co. 24. b.) ley, (2 Leon. 208.) the freehold was in the manor by grant to a stranger; vest remained. *No enfranchisement*, nor: and, consequently, those cases e as to freebench. *Cro. Jac.* 126.

And see 3 *Siderf.* 19. (*per Fitch*,) mt.

ENFRANCHISEMENT OF COPYHOLD PREMISES
BY WAY OF BARGAIN AND SALE.

THIS INDENTURE, &c. BETWEEN *A. B.* of, &c. lord of the manor of *C.* in the county of *D.* of the one part, and *E. F.* one of the copyhold tenants of the said manor, of the other part: WHEREAS the said *A. B.* is seised to him and his heirs of an estate of inheritance in fee-simple of and in the manor aforesaid, and the said *E. F.* is seised or possessed of the messuage, &c. hereinafter particularly described, of an estate of inheritance in fee-simple, by copy of court-roll, at the will of the lord, according to the custom of the said manor of *C.* (the said copyhold messuage, &c. being within, and parcel of, the said manor.) AND WHEREAS the said *A. B.* hath agreed with the said *E. F.* for the consideration hereafter mentioned, to enfranchise the said messuage, &c. NOW THEREFORE THIS INDENTURE WITNESSETH, That, in pursuance of the said agreement, and in consideration of the sum of, &c. The receipt, &c. He the said *A. B.* HATH granted, bargained, sold, aliened, released, and confirmed, And by these presents, DOTH, &c. unto the said *E. F.* and his heirs, ALL that the said messuage, &c. Together with all

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Recital that
A. B. is lord
of the manor,
and that *E. F.*
holds of him
by copy;

and that the
lord has agreed
to enfranchise
the copyhold.

Grant of the
freehold.

Free from
copyhold
services, &c.

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 right, title, inte
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 said *E. F.* his h
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 of them, or an
 holden of, or a
 PROVIDED ALWA

ENFRANCHISEMENT.

and meaning of these presents, and of the parties hereunto, that these presents, or any clause, matter, or thing herein contained shall not extend, or be deemed, taken, or construed to extend, to enfranchise or make free, the remaining or any other parts of the several copyhold lands or tenements (not herein before granted,) and now or late of him the said *E. F.*; or to acquit or discharge the said remaining or other parts from any payments, rents, quit-rents, fines, heriots, fealty, suit of court, or any other payments, duties, customs, or services, which by or according to the custom of the aforesaid manor, the said respective copyhold lands or tenements, or any of them, have at any time heretofore been subject or liable to, or charged with, or which have been or ought to have been paid, done, or performed, for or in respect of the said respective lands or tenements, as copyhold and parcel of the said manor. AND THIS INDENTURE FURTHER WITNESSETH, That, it being the intention of the parties hereto that the said *E. F.* and his heirs should for ever use and enjoy the same commonage in and upon all and every the wastes, commons and commonable lands of, or belonging to the said *A. B.* as lord of the said manor of *C.* notwithstanding the enfranchisement of the said messuage, &c. as be the

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A. B. as lord of
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or in any wise h
hold tenant, ow
messuage, &c. is
made. (*Then f*
title.)

E]

GENUINE EDITION.

A

TREATISE

ON

COPYHOLDS.

By CHARLES WATKINS,

OF THE MIDDLE TEMPLE, ESQ. BARRISTER AT LAW,

AUTHOR OF AN ESSAY ON THE LAW OF DESCENTS, &c. &c.

THE THIRD EDITION,

REVISED, WITH LARGE CORRECTIONS OF THE TEXT FROM THE
AUTHOR'S PAPERS,

NOT IN ANY OTHER EDITION,

AND WITH NOTES OF THE MORE RECENTLY ADJUDGED CASES ON
THE SUBJECT,

By ROBERT STUDLEY VIDAL,

OF THE MIDDLE TEMPLE, ESQ. F. R. S. A. THE AUTHOR'S EXECUTOR.

*To this Edition is also added a very large Appendix of
Manorial Customs, &c.*

VOL. II.

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THE AUTHOR'S
PREFACE
TO THE FIRST EDITION.

THE Author is at length enabled to fulfil his intention of giving a second volume of a Treatise on Copyholds. The first, indeed, was, so far as he was empowered to make it, complete in itself: it embraced the law relative to the NATURE, CREATION, TRANSFER, AND DESTRUCTION, OF COPYHOLD INTERESTS. There remained, however, subjects which he considered as necessary to be treated of under the learning of copyholds, but which could not, with any propriety, be sufficiently investigated in that volume, without deranging the plan of the work and destroying the connection which he wished to preserve. In the present volume, therefore, he has treated of the CUSTOMARY COURT, of CUSTOMS, of FREEBENCH and of CURTESY, of GUARDIANSHIP, of LICENSE, of HERIOTS, of SUIT, of RENT, of CORPORAL SERVICES, and of THE APPLICATION OF THE STATUTE LAW TO COPYHOLD PROPERTY.

He has pursued the same method in the 'present, as he pursued in the former volume. He has been brief; and, where the subject permitted him, he has endeavoured to extract consistency. This he found, however, was not always even to be hoped for. He found reporter against reporter, and case against case. He found consequences continue when their causes had ceased. He found conclusions, which justly followed from premises which once existed, applied to instances in which those premises could not exist. He found arbitrary assertion adopted by servility, cherished by prejudice, and at length matured into doctrines whose law could not be questioned, but whose absurdity was too apparent to be denied. It must not therefore be wondered at, if, when so situated, he has, in some instances, left the law in all its *glorious* uncertainty: and to such uncertainty must it always be subject, while we consider common sense as subservient to precedent, and suffer the blunders of one age to be the *criteria* of right in another.

Much still remains for investigation. Our laws of property are so connected with each other, that some relation to the doctrine of copyholds may be traced in most of them. What, however, may be deemed necessary to a system of

It is not treated of in these
must leave to those who have
are better calculated for the
himself.

be expected which did not
reform. It has even been in-
the law relative to Courts-
but he must beg leave to say
was writing on the law of
surely the law of courts-leet
that law. He might as well
ation upon thunder, or upon

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the laws relative to freehold,
ose relative to copyhold pro-
nly by way of illustration, or
ot be separated.

er the work more generally
sy to be consulted, the Author
e Index to the Cases into one
s also done with the general

of his preface to the preceding
ed that, as the present one
ts, relate more immediately to

local matter, the communication of any curious entries, customs, &c. relative to particular manors; would be much esteemed. He was induced to make such intimation from being sensible that such entries, &c. though immediately of local relation, frequently illustrated the general law. However, it only remains for him to say, that not a single communication has been made to him in consequence of what he then said; and, therefore, he has no one to thank. The communications which he received were from friends, who made them independently of that intimation, and towards whom he shall retain a just sense of gratitude.

Whatever the defects of this Treatise may be, the Author now commits it to the world; conscious that some pains have been taken to make it useful, and satisfied that they will not be wholly disregarded by those, the approbation of whom only he feels any wish to obtain.

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ON

HOLDS.

CHAPTER I.

COURTS.

Under feudal law, every chief of jurisdiction commensurate with the feudal laws.

The king, as supreme and paramount, had authority over his county; the alderman, over his manor or township; and the justice of the peace, over his hundred. All these jurisdictions were brought to the king's court.

Every subject, however, was not suffered to sue at will; nor could exercise

B

authority over a person who was the of another chief, if any dispute at tween the lord and tenant, or betw tenants of different manors or distri cause was brought before the tribu mediate above, till it reached the council or national court-baron.

In criminal
causes.

The jurisdiction of each lord or extended over criminal, as well as civil occurring within his manor. But, country became more settled, his a became proportionably abridged. Be national courts could extend their i to the more remote districts, inhab a barbarous and ferocious race, they the assistance of a chief who resid mediate on the spot where the cri committed, and who possessed an power to punish the offender : bu the people became more civilized, : jurisdiction of the superior courts became more acknowledged and obeyed, the [3] ance of the immediate chieftain beca necessary ; and his authority, of conseq decreased.

Hence we find that at a very early

Courts-leet.

[4]

In civil
causes.

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t
s
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or
of
or

of personal actions where the debt or damages amounted to forty shillings *: nor could they intermeddle with the right of freehold of their tenants but by virtue of the king's writ †.

Court-baron. The court-baron, thus restricted, was, however, incidental to the manor; it was a necessary and inseparable concomitant. And to the court-baron every *freehold tenant* of the manor was, and is still, obliged to do suit.

Customary court.

Thus the court-baron was the court of the frank-tenants; and in which the villein, or base tenant, could not appear. The lord, therefore, held another court for those persons who held of the manor by villein or base services, and who were dependent on his will, or claimed merely by custom: and which therefore took the appellation of the villein, the base, or the customary court.

* *Brit. cap. 28. De Dette. Regist. 144. b. &c. 2 Inst. 311, 312. & F. N. B. 146.*

† *Glanv. lib. 12. cap. 2. Stat. 52 Hen. 3. cap. 22.*

5

[5]

[6] court-baron, was incident to the
 If there were tenants who held
 services this court followed of
 as without this court the business
 latter tenants could not have been
 acted.

Who may hold
 a customary
 court.

Every person, therefore, who has
 of which others hold by copy or base
 may, as a necessary consequence, hold
 a customary court.

Parceners.

Whenever a manor, therefore
 divided, at least by act of law (d)
 of the copyhold-tenants is allotted
 and part to another, it should

(c) For it is not necessary that there
 be tenants holding of the manor: for if the
 tenancies escheat, or the lord release the
 services of all his free-tenants, yet he
 may hold a customary-court for his copyholders. 4
Melwich's case. A *quo warranto* lies of a
 See *Yelvert*. 190 & 192. *Rex v. Staterton*
 259. *Rex v. Stanton*. Guardian must hold
 in his own name. *Cro. Jac.* 99. *Owen*, 115.

(d) See *ante*, vol. 1. ch. 1. p. [16].

customary courts must be accordingly multiplied (*e*). As one lord could not hold a court for another, each must have held a separate one from the nature of the thing; as the court must be holden by some or other, that the tenants be not injured.

[7]

So if the widow of a lord be endowed of the manor, and several copyhold tenements be assigned her in dower, she may hold a customary court for the copyholds assigned (*f*).

Dowress.

So if the freehold of *several*, or of *all*, the copyhold tenements of a manor be granted or demised to a person, it is said (*g*) that the grantee may hold such court: though

Grantee of
the freehold.

(*e*) In the book of *Doomsday* is the following entry: "Duo Frs: tenuer: in paragio, qsq: habuit *Haula*:"—*Berchscire*:—*Terra Gislebti de Breteville*:—*Hevaford*, in *Merceha*: *Hd*: Tenants in common: one cannot hold. See *Dyer*, 377. a. in margin, pl. 28.

(*f*) *Cro. Eliz.* 661. *Gay v. Kay*.

(*g*) *Ibid.* 662. *Sir Christopher Hatton's case* cited. 3 *Leon.* 109. S. C. cited. 4 *Co.* 26. a. and b. *Melwich's case*, and *Neale & Jackson*.

the grantee of the freehold cannot (*h*). If by the grantee of several it might be attended the copyholders; who to suffer as a consequence. But it seems could not make a new or forfeited copyhold again (*i*).

A customary-court the manor for which this not only from the which the tenants might be compellable to go when pleased to require the the known feudal principle that a court was incident justice brought home

(*h*) 4 Co. 24. b. and 2 Neale & Jackson, *ubi supra*

(*i*) See *ante*, vol. 1. ch.

(*k*) Co. Litt. 58. a. and 47-8. 50. 4 Co. 24. a. C

COURTS.

9

principle would be frustrated by the lord's obliging the tenants to go elsewhere for justice.

If, indeed, the lord have an honour extending over several manors, a court held any where within the honour may be good by custom (*l*), as to the customary tenants; though not, perhaps, as to the free; as the former were more dependent upon the lord.

[9]

But it may be held any where within the manor, at the pleasure of the person holding it (*m*); unless some ancient custom require it to be held at a certain place.

In very ancient days, courts, whether for deliberation or the administration of justice, were held in the open air. And when we consider the number of persons who frequently assembled, we may well conclude

Courts held in the open air.

(*l*) *Cro. Car.* 367. *Seagood v. Hone.* *Co. Litt.* 58. a. 4 *Co.* 27. a. *Clifton & Molineux.*

(*m*) So of a court-baron. *Kitch.* 95. b. *Co. Copyh.* 2. 31. p. 50.

that they could not conveniently elsewhere (*n*).

[10] Thus we read in the EDDA (*o*), that, governors were established in the be and ordered to decide whatever disputes should arise among men, they assented the plain of IDA."

The Welch and Irish, and other nations, held also their courts of justice in the open air: and, generally, on the top of a hill. The judge took advantage of the eminence, and also, as we find, of the wind for we read that he very wisely turned his back to it, and so opened the court, and the people being ranged beneath him he could both see and be seen most commodiously (*p*).

Indeed, so prevalent was this

(*n*) And see 1 *Tyrr. Hist. Engl. Introd.* civ
(*o*) *Fab.* vii.

(*p*) See 1 *Whit. Manch.* b. 1. c. 8. p. 277, and 376. 8vo. and the authorities cited. Cf. *Isle of Man. Spelm. Gloss. voc. Mallobergian*

11.

{ 11 }

of the *German* princes he
under trees."

[14] In this kingdom also
vailed : AUGUSTINE, in
bert, summoned the *B*
synod, at a place calle
Augustine's Oak (z).

The *Wapentake* of
West Riding of Yorksh
of *Berks*, are supposed
name from remarkable o
inhabitants were used, in
cies, to convene, and c
affairs (a).

And the ingenious
informs us, that he k
Shropshire, where the m
at the time he wrote,

(z) See 1 *Tyrr. Hist. Engl.*
Camd. Brit. in Worcestershire,
(a) *Transl. n. (*,*) to Mall.*
Camd. in Berkshire.

steward called over the
 ed a jury, and then
 to a neighbouring inn
 ss (b). And a similar
 e author of these pages [15.]
 in other manors in the

of countries, justice In the gates
 he most public manner. of the city.
 e judges " sat in the
 d we are told that the
 is day in various parts

led to by Homer, and
 led at Rome.

we have instances of

56.

eb. Bib. 481. & Falc. Clim.

13. and notes.

at the court of the Grand
 Port, from the circumstance
 ustice at *the gate* among the
 3, and see *Falc. ubi sup.* See
 49. N. (i).

a similar practice. It seems alluded to, at least, in a law of *Athelstan* (d).

[16] The constable of the castle of *Dover* is forbidden, by stat. 28 *Ed. I.* c. 7. to hold certain pleas “*a la porte du chastel* ;” * which, as the author of “*Observations on the Statutes*” very justly remarks (e), should be translated “*at the gate*,” and not “*within*” it, as it is usually rendered. And the same learned writer gives us a passage from *La Vie de S. Louis*, (p. 13,) wherein are mentioned “*les plex de la porte* (f).”

Plaints, too, were frequently heard and determined, and canonical purgation made, at the doors of our churches. Whence it has been conjectured, that such was the

(d) See *Seld. Tit. of Honour*, part. 2. ch. 5. s. 4. p. 515—16.

* And see *Long Quinto*, 127. b.

(e) P. 164—5.

(f) In France it was anciently the custom to present petitions or complaints to the king at the gate of his palace. See *Mill. View of Engl. Gov.* b. 2. c. 3. p. 323.

Halls.

[17

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ministration of justice. *William the Conqueror* established a court in his own *hall*, which was thence denominated *aula regia*, or *aula regis*, and was the supreme court of justice in the kingdom; and in it the king himself, or the *capitalis justiciarius totius Angliæ* presided (*k*). It was for this court that *William Rufus* builded *Westminster-hall*.

[18] The great men who had any particular jurisdiction, held their courts also in their halls; which, in early days, were the most spacious apartments in their mansions.—Hence the term *hall* was frequently applied to a court-baron (*l*); as the word *bre* was among the Welch (*m*). Hence the town-hall, shire-hall, &c.

And it is observable, that in many parts of the kingdom, the manor, and, from those,

(*k*) 3 *Bl. Comm.* c. 4. p. 38.

(*l*) *Vide Spelm. Gloss.* voc. *Haligemote*. And see *ante*, p. [6], note (*e*). The bailiff of a manor was frequently called the *Hallward*.

(*m*) *Ante*, p. [10].

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of his tenants who hold by villein or base services.

In the Supplement to *Coke's Copyholder* (s), it is said that the lord is not compellable, by his copyholder, to hold or call a court to accept a surrender. But it appears sufficiently established that he is compellable, both in equity (t) and at law (u), to hold a court, if the business of the copyhold tenants require it.

[20] Previously, however, to an application being made to a court, either of law or

(s) S. 3. Tr. 149.

(t) Nels. Rep. in Chan. 12. *Moor & al. v. Lord Huntingdon*. Dyer, 264. a. *Roswell's case*. Cro Jac. 368. in *Ford v. Hoskins*. Lord compellable to hold a court-baron. F. N. B. 12. D.

(u) By mandamus. *The King v. Lord Lonsdale* Hil. 39 Geo. 3. See 2 Ves. 396. *Lord Montague v. Dudman*.

It is too greatly to be feared that a steward frequently defers holding *general* courts, that the tenants may be induced to request a *special* one; by which an additional fee would be put into the pocket of the said honest man.

and or requisition
 ie person or per-
 such court to be
 , may be to this

the manor of *Fair-* Requisition to
 — hold a court.

are hereunto sub-
 the said manor of
 art-roll, do request
 customary court, in
 as soon as conve-
 the mean time, to
 e such matters and
 o as appertain to
 as well that the
 on the part of the
 id of us and others
 reof, may be re-
 is also for the dis-
 siness as of right
 executed at such
 h now appears to
 of the same with

[21]

all convenient speed both advisable and requisite.

Dated this day of
one thousand, &c.

A. B.
C. D.
E. F.
&c."

Holding a
court in the
night.

The holding of a customary court in the night, or, at least, after the setting of the sun, has been adjudged good (*x*); though no particular custom for so holding it appears to have been alleged or relied on.

[22]

Who shall
preside in the
customary
court. Lord
pro tempore.

Whoever is lord *pro tempore* may hold a court, though he be only a tenant at will (*y*): and even if a person who is lord by wrong,

(*x*) *Moore*, 68. pl. 185. On a Sunday. See *Co. Ent.* 206. a. (and col.)

In the manor of *Kingshill in Rochford*, in the county of *Essex*, a court is said to be held on Wednesday morning next after Michaelmas yearly, at cock-crowing, before it be well light, and which is denominated the *Lawless Court*. See *Cowell & Jacob*, voc. *Lawless Court*.

(*y*) See *ante*, vol. 1. ch. 2. Of Grants, p. [24], &c.

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could not be *his own deputy* (*e*); which surely does not require any legal *authority* to convince us of—since, as representation must necessarily exclude identity, so identity must necessarily exclude representation.

[24]

Besides, it is repeatedly laid down in our books, that, in a customary court, the lord or steward is judge (*f*); now surely a person cannot be a judge in a court which he cannot hold. But as it is acknowledged that the lord may be a judge in a customary court, it should seem to follow of necessity, that he may hold it himself if he pleases.

Lord sits as
chancellor.

But the lord has not only a legal, but an

(*e*) So in *Chelmely v. Morton*, 2 *Show.* 180. it was held that a mayor, *if owner of a fair*, could not be a good steward of it.

(*f*) *Co. Lit.* 58. b. 4 *Co.* 26. b.

Lord Coke, speaking of a steward, (*Copyh.* 2. 45. *Tr.* 102.) says, "he representeth the lord's person in many employments: for, *IN THE LORD'S ABSENCE he sitteth as judge IN COURT*, to punish offences," &c.

"If a LORD *in OPEN COURT* doth grant," &c. *Calth.* 47.

equitable authority. He sits in his court as chancellor, and "may redress matters in conscience, upon bill exhibited, where the common law will afford no remedy in the same kind (g)."

Thus, if I surrender to *A.* in trust to raise a sum of money, and the money be raised, and I require him to re-surrender to me, and he refuse; I may exhibit my bill, on which the lord may decree against *A.* that he surrender; and if *A.* refuse, the lord may seize and admit me (*h*).

This mode of petitioning the lord was frequent in earlier days (*i*), when the Court

[25]

(g) *Co. Copyh.* s. 44. p. 100-1. See *ante*, vol. 1. p. [8]. & [90]. n. (i). *Watk. Introd. to Gilb. Ten.* xii. *Moore*, 68-9. pl. 185. *Co. Litt.* 60. a. And see 2 *Bulstr.* 336. 1 *P. Wms.* 330. 4 *Co.* 30. b. at the end of *Shaw v. Thompson*. *Kitch.* 82. b.

(h) 1 *Leon.* 2. pl. 2. *Co. Copyh.* s. 44. *Tr.* 100.

(i) As matters of curiosity, copies of two "Englishe Bills,"—one preferred to the steward in the time of *Henry the Eighth*, and the other to the lord in the 43^d of *Elizabeth*, will be given at the end of this chapter: and for which the author is indebted to the

of Chancery was not so at present. Nor is the writ of false judgment will decision of this court (*k*), it the only remedy which the have (*l*).

Steward.

But the lord need not himself, he may appoint a steward for him; and he need not re by deed; it will be sufficient by parol (*m*). Though, in king, or in that of a corpe be proper, if not necessary, patent or deed (*n*).

friendship of the Rev. Mr. *Corsellis* of *Wickenhoe*, and the ingenious *Colchester*.

(*k*) *Moore*, 68. pl. 185. *Co. Litt.* *Co. Copyh.* s. 51. *Tr.* 118.

(*l*) See of reversing a recovery, as n. (*i*).

(*m*) *Co. Copyh.* s. 45. *Tr.* 104. may appoint a steward. 21 *Fin.* 51 Stewardship cannot be granted in *Thornhill v. Evans*.

(*n*) *Co. Copyh.* s. 45. *Tr.* 104-5.

And even if a person has only a reputed or ostensible authority as steward, though in reality he have no regular appointment, yet what he does *ministerially* in court shall never be questioned; but he ought to have a legal and regular authority to *grant*(o).

But if a stranger, without the appointment of the lord or consent of the right steward, or without any colour of authority, will, of his own head, come into a manor and keep a court, it seems, says Lord Coke (p), that the performance of any judicial act, or the executing of any act whatever, will not be warranted, especially if the court be kept without warning given to the bailiff by precept, according to the custom,

For there is a difference, as is justly observed in *Moore* (q), between a steward who

[27]

(o) *Ante*, vol. 1. p. [29].

(p) *Copyh.* s. 45. *Tr.* 105.

(q) *Moore*, 112. in *Knowles v. Luce*.

has colour but no right to hold a court, and a person who has neither colour nor right for if one who has colour assemble the tenants and they do their services, the acts of such person are good : as in the cases of an under steward, where the chief steward is dead ; or the clerk or secretary of the lord of the manor who holds a court without the contradiction or disturbance of the lord, though he have no patent nor express authority from the steward ; and the reason is, because the tenants are not obliged to examine whether the authority of the steward be lawful or not, nor is he obliged to render any account of it to them.

So if two persons be appointed *joint stewards*, a court held by one only will be good (r).

[28]

Under-
steward.

So a steward may depute or authorize another to hold a court ; and the acts done in a court so holden will be as legal as if the court had been holden by the chief

(r) *Knowles v. Luce*, *ubi sup.* and see 19 *Vin.* 600.

Manner of
holding a
customary-
court.

Notice.

[29]

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other place of notoriety within the same manor (*u*); and especially if the court be held on a certain day, by custom, as on *Michaelmas* or *Lady Day* in each year, that he may be *amerced* for non-attendance (*x*), though *no forfeiture* can incur.

According to the report of *Taverner v. Cromwell*, by *Croke* (*y*), four days notice was held to be sufficient. But it would be proper to give at least ten or fourteen days; and, especially, if the manor be of considerable extent.

Form of the
notice

If the court to be held be merely a general customary court, the notice may be to the following effect:

[30]

Manor of } " Notice is hereby given, that
Fairhurst. } the next general customary court
of the right honourable — Earl of —,
lord of the manor of *Fairhurst* aforesaid,

(*u*) See *Co. Entries*, 288. a. *Taverner v. Cromwell*.

(*x*) See 3 *Bulst.* 80-1. *Belfield v. Adams*.

(*y*) *Cro. Eliz.* 353.

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8 Style of the
9 the Court.

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6 [31]

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Manor of } " A general [or special] cus-
Fairhurst. } tomary court of the right honour-
 able ——— Earl of ———, lord of the
 manor of *Fairhurst* aforesaid, held in and
 for the said manor, on the day
 of ——— in the year of our Lord, &c. before
A. B. Esq. chief steward of the manor
 aforesaid."

[32] If a court-baron be held with a cus-
 tomary court, it would be the safer way
 not to mention expressly before whom the
 several courts are held, but to state the
 persons generally; and so leave it to the
 law, which will consider the proper business
 of each court to have been transacted before
 the regular judges (a). Thus :

be that of "A COURT," generally, without more; some-
 times, "The First Court,"—"The Second," &c. of the
 then lord.

"*Curia R. F. C.*" *Kitch.* 53. b.

"*Prima Curia. T. F. Gen: Dm: Manerii pd: ibm:*"
 &c.

"*Ad primam Cur.*" &c.

(a) 1 *Freem.* 525. *Ca.* 707. and see *Watk.* No. lxxxix.
 to *Gillb. Ten.* 433.

Court-baron and general
court of, &c.

Sq. chief steward of
the manor.

} Free-suitors : sworn.

} Copyhold tenants :
sworn.

J. R. Beadle, &c."

When the clerk takes his seat, the Opening of
the court.
he says that the court is sit-
ting in open court. He then must
make a proclamation, requiring all
who are entitled to appear at
it to appear or make

[33]

The suitors are then to be Suitors called.
called to their appearance, *Essoign*,
recorded.

D

Essoigns.

To make *Essoign* is to justify the non-attendance of the person owing suit, by alleging some excuse, as that he is ill, &c. and this *Essoign* may, from the very nature of the thing, be made by attorney (*b*).

Homage
sworn.

The suitors (*c*) who appear, should then be sworn on the homage. The foreman should be first chosen, and sworn: and the oath may be thus:

Oath.

“ You, *A. B.* as foreman of this homage, shall truly present all such matters and things as are presentable at this court, as the same are already known to you, or, during the sitting of this court, shall come to your knowledge. You shall present nothing out of malice, nor conceal any thing from favour or affection; but, in all things, present the truth, the whole truth, and nothing but the truth, according to your information and belief.

[34]

“ So help you God.”

(*b*) 1 *Leon.* 104. Sir *J. Braunche's* case.

(*c*) Who are suitors, &c. See *post.* ch. 7. Of Suit.

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Plaints.

When the homage are sworn, let proclamation be made for those who have complaints to enter them.

[35]

Copyholders shall neither plead nor be impleaded for the tenements which they hold by copy, by the king's writ; but shall have their complaints in the nature of the several actions at common law (*e*).

If, however, any dispute arise between lord and tenant, it must, of necessity, be referred to the courts above; as the lord must not be both party and judge (*f*).

Form of the
plaint.

The complaint in the customary court is thus entered: "*A. B.* complains against *C. D.* of a plea of land, to wit, of one messuage, forty acres of land, &c. with the appurtenances; and makes protestation to follow

(*e*) *F. N. B.* 12 B. *Litt.* s. 76. *Kitch.* 113. b. *License.* See *F. N. B.* 2 F. (but note, this in *F. N. B.* is of freehold.)

(*f*) See 1 *Salk.* 56. *Baker v. Wich*, & *ibid.* 185. *Brittle v. Dade*, and *ante*, p. [1-2].

his plaint in the nature of the king's writ of assize of *Mortdancestor*, at the common-law ;" or " of an assize of *Novel Disseisin*;" or " *Formedon* in Descender at the common-law ;" or in the nature of any other writ, &c. (g). [36]

Pledges to prosecute ;
John Doe and Richard Roe.

(g) *Litt.* s. 76. *Co. Copyh.* s. 51. *Tr.* 118.

As a writ of entry *en le post.* *Moore*, 68. pl. 185. in the *per.* *Co. Copyh.* s. 41. *Tr.* 91. So before the statute 32 *Hen.* 8. c. 28. in the nature of a *cui in ritd.* *Dyer*, 264. a. pl. 38. *Roswell's* case. But it has been said that that statute extends to copyholds ; (*Cro. Car.* 43.) and, if so, a plaint in the nature of a *cui in ritd.* is become unnecessary. See *Watk. Gilb. Ten.* 109. and *post.* ch. x.

In the nature of a writ of *Dower.* 4 *Co.* 30. b. *Shaw & Thompson.* Or of a writ of *Aiel.* 2 *Freem.* 106. *Knight v. Adamson.* But *quære* whether a plaint in the nature of a writ of *Mortdancestor* ever lay of copyholds. See *Watk. Gilb. Ten.* 287. N. z. Plaint in nature of a writ of right. See 3 *Leon.* 99. *Ca.* 142. And make protestation to sue in the nature of assize *mortdancestor.* *Old N. B.* 16. b. *Fitzh.* says (*N. B.* 12. B.) that the copyholder may sue in the nature of what writ he will. Same process as at common law. *Kitch.* 113. b. Not force. See 3 *Leon.* 99. *Ca.* 142. Trial on a plaint in nature of a writ of right. If

Formedon.

But if a donee in tail bring a plaint in the nature of a *Formedon*, he ought to count of the gift made by the copyholder who surrendered, and not by the lord; for the lord is only an instrument of conveyance; and nothing passes from him (*h*).

In the *per*.

So if a plaint in the nature of a writ of entry in the *per* be brought, it shall be

in a court-*baron* the *mise* be joined to be tried by the grand assize, prohibition shall go. See *F. N. B.* 4. E. Copyholders being originally villeins, could not be knights, and consequently the *mise* could not be joined in customary courts on the grand assize. Jury in place of the grand assize. See *Dyer*, 111. b. pl. 41. *Stafford's case*, and *Tr. 7 Ed. 3. pl. 65. f. 65. a.* (*Per assent of parties.*) *Cruise on Fines*, 95. *Rob. Gavelk.* 254-5. Four men not knights. *Fitz. Abr. Droit.* 51. & *Tr. 7 Ed. 3. pl. 65.* It seems, therefore, that trial may be in a customary court by the tenants, in nature of a grand assize, by consent of parties. See *Tr. 7 Ed. 3. pl. 65.* and *F. Abr. Droit.* 51. The champion was to be a freeman. See *Bro. Battaile*, 8. & *Inst.* 247. But here the parties were free. No battle if there could be no assize. See 21 *Vin.* 31. *Trial*, (K. 2.) pl. 7.

(*h*) *Cro. Eliz.* 361. *Paulter v. Cornhill & al.* And see 3 *Co.* 8, 9. 4 *Co.* 22. a. 23.

[37]

Limitation.

Ejectment.

[38] done by him to the premises demised (*n*).
Yet *quære* as to this, as *the lessee is not a copyholder*.

As an ejectment will not lie after twenty years, if the copyholder has been more than that period out of possession, he must still, therefore, in order to try his title, have recourse to his plaint in the nature of the several real writs at the common law.

Error, how
redressed.

If an erroneous decision be made in the customary court, the party grieved shall not have a writ of false judgment, but must sue to the lord by petition (*o*).

Though it has been laid down, that if an erroneous judgment be given in such court on a plaint in the nature of a *Formedon*, a bill may be exhibited in Chancery in the nature of a false judgment to reverse it (*p*).

[39] And in the case of *Ash v. Rogle* and *the*

(*n*) *Co. Copyh.* s. 51. *Tr.* 119. *Kitch.* 84. b.

(*o*) See *ante*, p. [24-5].

(*p*) 1 *Roll. Abr.* 373. *Chancerie* (M) pl. 2. *Patteshall's case*. And see 1 *P. Wms.* 330. & *Lanc.* 98.

Dean and Chapter of St. Paul's (r), the Lord Chancellor said "If there had been an error in any ADVERSARY proceedings in the lord's court, this court would have ordered the lord to proceed and examine it." Though he dismissed a bill praying relief against a *common recovery* suffered in a customary court, though the errors were apparent, and his dismissal was affirmed in the Lords (s).

We have repeatedly noticed, that recoveries Recoveries. are frequently suffered in the customary court (t); but fines are seldom levied in Fines. them. And yet it would seem that a person permitted to sue out his plaint *and proceed to judgment*, might also be suffered to *compromise his suit* (u): for it is not essential [40] to the efficacy of a fine that it be levied in a *Court of Record* (x).

(r) 1 Vern. 367.

(s) Show. P. C. 67. *Smith & Ux. v. Dean and Chapter of St. Paul's and Rogle.*

(t) See the manner of suffering them, *ante*, vol. 1. p. [161-2].

(u) See *Hargrave's* No. 1. to *Co. Litt.* 121. a.

(x) 1 Salk. 340. *Hunt v. Bourne.*—*Com. Rep.* 93. 124, &c. S. C.

In the report of the case of *Hunt and Bourne*, by *Salkeld* (*y*), it is said, that the 18th *Edw. I.* “ was made to rectify a mistake (*a*), viz. that fines were leviable in inferior courts upon bills or complaints, which now cannot be, either by grant or custom, by reason of the negative words of that statute.” But it is observable, that neither the statute of the 18th *Edw. I.* (*b*), nor that of the 27th *Edw. I.* (*c*), nor even the *Second Institute* (*d*), speaks of fines levied “ in inferior courts,”

[41] but only in those of *the king* (*e*) : and it is

(*y*) *Ubi sup.* But *Comyns* gives the assertion about to be noticed to *Powell, J.* only. (*Rep.* 126.) And in Lord *Holt's* own statement of his argument, which the author has seen, and which is still extant in his lordship's hand-writing, no such assertion appears to have been made by Lord *Holt* at least.

(*a*) See 2 *Inst.* 513.

(*b*) *Stat.* 4. *Modus levandi Fines.*

(*c*) *Stat.* 1. c. 1. *De Finibus levatis.*

(*d*) 513.

(*e*) “ *Et fait assavoir qe Ordre le Ley ne suffre mie qe finale accorde soit leve en LA COURTE LE ROI saunz Brief. Original,*” &c. 18 *Ed.* 1.

“ *Quia Fines IN CURIA NOSTRA LEVATI,*” &c. 27 *Ed.* 1.

Without an original writ, indeed, there can be no

Presentments. When the several plaintiffs are entered and disposed of, the homage are to make their presentments; as, that since the last court *A. B.* died, seised of a certain copyhold tenement, and that *C. D.* is the next entitled (*i*); or that *E. F.* had surrendered out of court (*k*); or that *G. H.* had been convicted of felony, &c. whereby his copyhold became forfeited (*l*); or the like.

And if a copyholder be sworn on the homage, and wilfully refuse to present, on sufficient evidence being given, he shall forfeit his copyhold *ipso facto* (*m*).

[43]
Proclamations.

On the different facts being presented, the regular consequent proclamations must be made, as for the next heir, or person having right to the tenements of which *A. B.* died seised; or the person to whose use *C. D.* had surrendered certain other tene-

(*i*) See *ante*, vol. i. p. [232].

(*k*) See *ante*, vol. i. p. [79]. [82].

(*l*) See *ante*, vol. i. p. [346], &c.

(*m*) *Co. Copyh.* s. 57. *Tr.* 132. 3 *Leon.* 109. *Sir Christopher Hatton's* case, cited as so adjudged; and *ante*, vol. i. p. [330].

Surrenders,
&c.

Minute-book.

Dissolution
of the court.

Rolls.

in the court-roll, it is not good, though it be never so publicly done; and no collateral proof can make it so.

But though there must of necessity be an entry on the court-roll before there can be a copy of that entry, yet, if a grant be made, either in or out of court, and not entered, there can be no doubt but that the regular entry may be compelled.

It is acknowledged, however, by *Calthorpe* (p), that though there must be an entry on the roll, yet it is not of necessity that there be a copy of that entry actually made; for if the tenant have no copy, or if he lose it, yet the roll is sufficient title for his copyhold *.

(p) *Readings*, 47.

* [A surrender and admittance to a copyhold may be proved by the original entries on the court-rolls, without shewing a copy stamped, as required by stat. 48 Geo. 3. cap. 149. 16 *East*, 208. *Doe d. Bennington v. Hall*. And per Lord Ellenborough, C. J. (*cur. assent.*) It is not necessary for the tenant to produce his copy, if he chooses to risk the evidence of his title in not taking a copy. — How can a copy be evidence unless the original be evidence? *Ibid.* 209.]

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And it was held, by Lord *Hardwicke*, in the case of *Car v. Ellison* (*t*), that, though the declaration of the uses of a surrender was not inserted in the court-rolls, but only indorsed on such surrender by the steward, it was enough.

Inspected by
the tenants.

[46]

If there be any cause or proceeding instituted (*u*) by one tenant of the manor against another (*w*), or by a tenant against the lord (*x*), the courts both of law (*y*) and

v. Foster. Ca. T. Finch, 254. Brend v. Brend. 2 Vern. 98. Towers v. Moore, & ibid. 547. Hill & Uz. v. Wiggett.

(*t*) 3 *Atk.* 73.

(*u*) 7 *Durnf. & East, 746. The King v. Allgood.*
[But *vid. infra*, p. [46], note (*a*).]

(*w*) 2 *Ves.* 578. *Anon.* 2 *J. Blackst. Rep.* 1061.
Folkard v. Hemet & al'. 12 Vin. 146. Evidence (F. b.)
pl. 8.

(*x*) 2 *Ves.* 621. *Anon.* 2 *J. Blackst. Rep.* 1030.
Addington v. Clode. If the tenant claims the lands as freehold, he shall not inspect in an action brought against him by the lord who claims the lands as copyhold. See 1 *Wils.* 104. *Smith v. Davies.* Lord cannot deny the copyholder access to the rolls. *Dyer, 264. a. pl. 38. margin. Stacy's case, Latch. 182.*

(*y*) 3 *Durnf. & East, 141. The King v. Skolley.*

Are e

giving the truth of the facts in evidence, yet they are in themselves evidence, *prima facie*, and entitled to credit (c).

[47]

Forging rolls.

If a copyholder forge a customary to the injury of the lord, it will be a forfeiture of his copyhold (d).

Destroying them.

And if the steward shew a court-roll to a copyholder, to prove that the land is holden by copy, and the copyholder tear the court-roll in pieces, alleging his lands to be free, he shall forfeit his lands so held by copy (e).

(c) *Bull. Nisi Prius*, 247. 5 *Durnf. & East*, 26. *Roe d. Bebee v. Parker*, and see 12 *Vin. Abr.* 105. & 214. *Evid.* (A. b. 28). (T. b. 24). *Latch*, 182. *Stacy's case*. Recital of a will in the copy of admittance, evidence against the lord or a stranger, but not against the heir. 1 *Lord Raym.* 735. anon. [See also as to variations in the entries not necessarily contradictory, 10 *East*, 520. *Doe d. Askew v. Askew*; and *infra*, p. [89], note (i).]

(d) *Ante*, vol. i. p. [334]. and see *Dyer*, 322. b. pl. 1. *Taverner's case*.

(e) *Ibid.* 333.

en. VIII. [48]

a only by
you' poore
my Wife
ig here of
o loke out
cavled the
ying w' in
o that they
sayd ryght
md yf you
re Ablilyte
' that I am
rthyng that
ye for you'
e whyche I
continewe

No. II.

[40]

Sarah Purdue Englishe Bill exhibited 8^o Octob. a^o. 43. Eliz.

To the right Worshipfull Robert Townsend
Esquyer Lord of the Manno^r of Wyvenhoe
in the County of Essex.

Humbly sheweth vnto yo^r worship yo^r poore and dayly oratrix Sara Purdewe of Wyvenhoe in the said County That whereas Willm Purdewe deceased Grandfather vnt : yo^r said Oratrix about XL or L yeres past was lawfully seised in his demesne as of ffee at the will of the Lord according to the Custome of the said Manno^r of & in one Messuage or tente & certayne lands meadowes & pastures called Thurstons & of & in one other Messuage or Tente & certayne lands called Scarletts And the said Willm Purdewe so being seised of the p^rmisses about the tyme aforesaid made (f) his last

(f) In the original, the words " a surrender thereof according to the custome of the said manno^r to the use of his last will and testam^t and about that tyme also made," are struck through with a pen.

by did devyse the [50]

Thurstons to one
his younger sonnes
old truly pay vnto
daughter for her
the some of six
Church of Wyven-
did by the same
ane Quickaley his
ls & tents called
that she should
his daughter the
the said will doth
afterwards the said
e admitted to the
the same accord-
t may please you
there were a Will
aforesaid Yet the
atrix doubteth not
iciently to pve that
sufficient surrender
the vse of the said
astome of the said
with that the truth
urrender was made
omes of money nor
paid to the parties

[51]

aforesaid according to the true intent and meaninge of the said Will by reason whereof all the said lands & tents & the right title & interest thereof did discend & come & of right doe apptayne & belonge vnto you' said poore Oratrix that is to say as daughter & sole heyre to James Purdewe sonne & heyre of the said Willm Purdewe And so it is also if it may please you' Worship that since the death of the said Willm and James all the copyes wryteings & evidences concerning the p'misses by some indirect meanes are lately come to the hands & possessions of one Thomas ffraunces Moyse Lock & Margaret his Wyfe who by colo' of haveing the same have lately vnlawfully entred into the p'misses & contrived secret estates thereof to be made to themselves & others to their vse. And although it is comonly reported & very well & notoriously knowne as well amongst most of you' worships auncient tenants there as to the parties themselves that the p'misses do of right belong unto you' said Oratrix as aforesaid & not vnto the said Thomas Moises & Margaret And that therevpon yo' said Oratrix both by her self and her frends hathe gently requyred them to deliv' her the said evidences and to

1 of the p^rmisses
 thervnto yet the
 ly refused & yet
 1 right equity &
 1 whereof & for-
 mnot for want of
 id evidences and
 yd of money &
 vnable to move
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 les by yo^r Wor-
 y order be taken
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 make playne &
 & to stand to &
 rabout as to yo^r [53]
 albe thought to
 science And yo^r
 / for your Wor-

E. Mydleton.

PETITIONS.

No. III.

*To A. B. Lord of the Manor
in the County of N. the
Petition of B. N. of B. in t
County, Esquire, sheweth,*

That in and by a certain indenture partite, bearing date, &c. and expressed to be made between *I. P.* of the first part your Petitioner of the second part ; and *of, &c.* of the third part ; the said *I.* for certain considerations in the same indenture expressed, did (amongst other things) covenant with your Petitioner, that he would forthwith surrender into the hands of the lord or lords, and according to the custom or customs of the manor or whereof the same were or should be all and every the copyhold or copyhold, messuages, lands, tenements, and hereditaments of him the said *I. P.* lying, and being in *B.* aforesaid, to the use and behoof of your Petitioner, his heirs and assigns ; and in the mean time as soon as such surrender or surrenders should be made, that he the said *I. P.* and his

ch copyhold or
 with their appur-
 r Petitioner, his
 he said *I. P.* at
 to such covenant,
 copyhold or cus-
 ands, tenements,
 resaid as of your
 r Petitioner has,
 re-recited inden-
) and requested
 into your hands
 of *C.* to the use
 irs, and assigns,
 omary hold mea-
 and heredita-
 rich he held as
 nt to and in sa-
 vant. And that
 ing the frequent
) made by your
) purpose afore-
 your Petitioner
 filled whatsoever
 e been complied
 behalf, hath ut-
 ch utterly refuse,
 ds, as lord of the

said manor of *C.* to the use of your Petitioner, his heirs, and assigns, all or any part of the copyhold or customary hold messuages, lands, tenements, and hereditaments, in *B.* aforesaid, which he the said *I. P.* at the time of the execution by him of the said recited indenture, held and now holds as of your said manor of *C.* contrary to the express terms of his said covenant, and to all right, equity, and good conscience.

Your Petitioner therefore humbly prays, that, forasmuch as he has no means at law of compelling the said *I. P.* to surrender the copyhold or customary hold messuages, lands, tenements, and hereditaments in *B.* aforesaid, which he held and now holds as aforesaid as of your said manor, into your hands, as lord of the said manor of *C.*, you, as lord of the said manor, will cause your precept to be directed to the said *I. P.* commanding him to appear personally at the next general customary court to be held in and for your said manor of *C.* and then and there before you as chancellor in your said court, to make direct answer to the premises, and to stand to and abide such further order as you, or your steward in

make. And in
 t appear as com-
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 ver to the pre-
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 fulfil his said
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 ts, in B. afore-
 the said I. P.
 and thereupon
 to be admitted,

PETITIONS.

your Petitioner to the same, pursuant to the covenant above set forth, and according to the custom of your said manor.

And your Petitioner, &c.

No. IV.

Summons or Precept.

Manor of } *A. B.* lord of the manor of *C.*
C. } in the county of *N.* to *I. P.* of
the city of *N.* in the said county, esquire,
greeting. For certain causes offered before
me as lord of the said manor and chancellor
in the customary court thereof, I command
and strictly enjoin you, that you personally
be and appear before me, as lord and chan-
cellor as aforesaid, at the general customary
court to be held in and for the said manor,
on —, the — day of — next, at the
hour of — in the —, to answer con-
cerning those things which shall be then
and there objected to you, in or by reason
or in consequence of a certain petition pre-

resented to me as chancellor, as aforesaid, by or on behalf of *B. N.* of *B.* in the said county of *N.* esquire, and also concerning such other things, as shall be then and there objected to you, and further to do and abide by what shall then and there be considered in the several premises. And this you in no wise omit, under forfeiture of such copyhold or customary lands and tenements, as you hold as of the said manor of *C.* And have then and there this precept, given under my hand this —— day of ——.

A. B. lord of the said manor.

At the suit of *B. N.* esquire.

CHAP. II.

OF CUSTOM.

[54]

What.

BY custom is here meant the law of a particular precinct, district, or territory, unwritten, and dependent only upon immemorial usage.

The general doctrine of these local customs has been so frequently and clearly laid down in many of our books (*a*), that it would be needless to go at length into it. I shall, therefore, content myself with briefly tracing its outline, except where those authors shall not appear to have been sufficiently minute.

(*a*) *Davy's Rep.* 31. *b. Case de Tanistry.* 1 *Bl. Comm. Introd.* s. 3. p. 74. *Co. Copyh.* s. 33.

OM.

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nguished from a *pre-*
sonal; and from the
universal. The usage
a custom : a right al-
son and his ancestors,
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[6
not ambiguous, inde- certain

compulsory; It must be *compulsory*; not dependent upon option or will.

not inconsistent with another custom;

nor contrary to the prerogative.

It must not be *inconsistent with another custom*; though it may be subservient to another's right (*b*). So a custom shall not be allowed against the king's prerogative (*c*); which, in the consideration of the law, must be equally ancient as the custom alleged; and where the right of the king and the right of the subject oppose each other, the right of the subject must give way *.

Trial.

The existence of a custom shall be tried

(*b*) See 5 *Durnf. & East.* 411. *Bateson v. Green & al.*— So one custom may be pleaded against another where both may stand together. 1 *Just. Blackst.* 49. *Kinchin v. Knight.* Lord Mountjoy conveyed lands to Browne, with a proviso that Lord M. might dig ore, &c. in the wastes. Adjudged that Browne might dig there also. *Co. Litt.* 164. b. 165. a.

(*c*) *Davys.* 33. b.

* [Finally it is to be remarked, that a custom must be *altogether* unexceptionable as to any of the above particulars; for if any *part* of a custom be bad, it is void for the whole. See 2 *Stra.* 1224. 1 *Wils.* 63. *Wilkes v. Broadbent.*]

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[57]

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[Proof.

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[58] alleges it (*h*); and it is not only necessary that he prove that the alleged custom exist, but also that the lands in question are within or subject to that custom (*i*).

Evidence.

The best and most direct evidence of a custom is that of a series of entries in the court-rolls (*k*); and, indeed, even a single entry has been admitted as sufficient evidence as to a descent (*l*). So an ancient presentment by the homage of the customs entered upon the rolls, though no instance was adduced

(*h*) 1 *And.* 192. *Exers v. Astwicke*. *Rob. Gav. c. 4.* p. 38.

(*i*) 1 *Bl. Comm.* 76. *Hod.* 286. *Roberts v. Young*.

(*k*) See *ante*, vol. i. p. [306].

(*l*) 3 *Wils.* 63. *Doe & Mason v. Mason*. There being no contradictory instances. [A single instance of a surrender in fee, by tenant in special tail, of a copyhold estate, held to be evidence of a custom within the manor to bar entails by surrender, though the surrenderor had not been dead 20 years, and though one instance was proved of a recovery suffered by tenant in tail to bar the entail. 2 *Maule & Selwyn*, 92. *Roe d. Bennett v. Jeffrey*. And *per Lord Ellenborough*, the evidence *unresisted* is certainly evidence of a custom. It is true that one act undisturbed does not make a custom, but it will be evidence of a custom. *Ibid.* See also 7 *Taunt.* 674. *Doe d. Dauncey v. Dauncey*, & *supr.* vol. i. p. [178].]

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[69]

case of an usage which is common to a whole country or district; as that of the border-lawes(*q*), or the customs of miners(*r*): though these last are properly the customs of such country or district, rather than of the particular manor in question *as that particular manor*.

Customs taken
strictly.

[60]

We have already observed that a custom is regarded as an exception to a general rule; whenever, therefore, that exception ceases, the general rule must prevail. The impolicy of a diversity of rules, and the consequent necessity of a certain standard, must be immediately apparent. Hence every special custom is to be taken strictly*.

Borough-
English;

If the custom of a manor be that the

copyholds, it can only be the particular usage of each manor: *per GIBBS, C. J. in Everest v. Glyn, 6 Taunt. 425.*]

(*q*) 5 *Durnf. & East*, 31.

(*r*) See 2 *Atk.* 189. *Dean and Chapter of Ely v. Warren.*, [Or, as it should seem, the usage of the fen countries, with regard to common of Turbary. *Ibid.*]

* [A custom in deprivation or bar of a copyhold estate shall be taken strictly, but when it goes to the making and maintaining such estate, it shall be construed favourably. *Comp. Cop. sect. 93. Cro. Elis. 879. Baspool v. Long.*]

61

as to col-
laterals ;

as to lineals.

[61]

Tenant dying
seised.

of the manor, or did not *die seised*, the descent cannot be within the custom. Thus if a tenant of the manor die seised of such lands, without issue, but leaving nephews and nieces, (the children of his brother,) the custom shall not extend to *them*; for they must make out their claim or pedigree through their father, who *was never a tenant of the manor*, and consequently could *not have died seised*; and, besides all this, they claim as COLLATERALS *of the last dying tenant*; and, consequently, without the custom in that respect also (*x*).

[62]

Surrender.

So if a copyholder surrender to the use of *A.* and his heirs, and *A.* die before admittance, the heir of *A.*, *according to the common law*, shall succeed, because *A.* was never a tenant; nor, of consequence, could *die seised* (*y*). But it was said, that it would have been otherwise

(*x*) 1 *Durnf. & East*, 466. *Denn v. Spray*. *A.* being admitted, dies, leaving *B.* his heir; *B.* dies without admission, yet he was seised. See 1 *Anstruth.* 13. *Morse v. Faulkner*, and see 4 *Co.* 22. b. *Co. Copyh.* sect. 41. *Tr.* p. 94.

(*y*) 1 *Salk.* 243. *Fane & Barr*, cited. See 1 *P. Wms.* 65.

if the lands had been found to be of the custom of *Borough-English* or *Gavelkind*, which do not require a dying seised.

Yet it is said (z), that a *trust in equity* shall go to the eldest daughter if the lands would have done so: and so of an *equity of redemption* (a). But a distinction has been made between trusts *executed* and *executory* (b); the latter of which shall be for the benefit of the heir at common law.

Cestuy que trust;

So if a *remainder* be limited of lands in Borough-English or in Gavelkind to "the right heirs" of a person, the *eldest* son shall take. For such customs are that the lands shall *descend* to all the sons, or to the youngest of them, and have nothing to do with a *purchase*; and the *remainder* would be taken by *purchase*, and *not by descent*; and, consequently, not being within the custom, it is

[63]

Remainder;

(z) 22 *Vin. Abr.* 185. *Uses* (D.) pl. 7. 2 *Roll. Abr.* 780, (D.) pl. 7.

(a) 2 *Ves.* 304. *Fawcett v. Lowther.*

(b) *Ante*, vol. i. p. [215].

Reversion;

the province of the common law to point out the person to take such remainder (*c*). But the *descent* of a remainder or reversion shall be according to the custom of the manor as to lands in possession (*d*); for a remainder-man or reversioner is in the seisin of the fee (*e*).

Rent;

[64]

And it should seem that a *rent* granted out of such customary lands shall follow the customary descent, even though it be a rent *de novo*; *a fortiori*, a rent reserved on a particular estate; as that must follow the reversion (*f*).

If a rent be *granted* out of such lands and lands at common law, the whole rent shall go to the heir at common law: but if rent be *reserved* on a lease of such lands and lands at common law, it shall be apportioned,

(*c*) See *Watk. on Desc.* ch. 5. p. 149. N. and the authorities there cited.

(*d*) *Ibid.* 153. N.

(*e*) *Ante*, vol. i. p. [58].

(*f*) See *Robins. Gavelk.* b. 1. c. 5. p. 79, and the books by him cited.

and follow the reversion of the lands respectively (*g*).

So if such lands be granted to *A.* and his heirs during the life of *B.* and *A.* die, living *B.* the customary heir shall take (*h*). Estate pour
autre vie;

If a person die seised of Borough-English lands, leaving a son born and another *en ventre sa mere*, the posthumous son shall enter upon his brother, as appears the better opinion (*i*). Child en ventre
sa mere.

So if the custom be that the eldest daughter shall have the lands after the widow's estate for life, and the tenant leave a widow and two daughters, and the eldest daughter die during the life of the widow, and then the widow die, the youngest daughter shall have the lands; for the widow's estate was a continuation of the estate of the husband, and

[65]

(*g*) *Ibid.* 84-5.

(*h*) See 2 *Lev.* p. 138. *Baxter v. Doudswell*, 1 *Salk.* 243.

(*i*) See *Robins. Gav. Append.* 13, and *Watk. on Desc.* ch. 4.

when that determined by her death, the second daughter was the eldest (*k*).

Of customs
running with
the land.

There are some customs, as those of Borough-English and Gavelkind, which *run with the land*; so that the lands cannot be discharged of them by fine, recovery, enfranchisement, or escheat, or any other mean than a positive act of parliament (*l*).

[66]

But this seems only to hold when the custom relates solely to the *locality* of the lands: as if it be pleaded that all lands *within the borough of B.* descend to the youngest son; the lands must for ever remain *within the borough of B.* whether they escheat or become enfranchised, &c. and, consequently, within, and subject to, the custom.

(*k*) 1 *Lev.* 172. *Newton & Shafto*. And see 8 *Vin.* 9. *Desc.* (N. 11.) pl. 4.

But if the eldest daughter had died, leaving a daughter who survived the grandmother, *she* should have had the lands *jure representationis*. See *Godfrey & Bullock, ante*, p. [60-1].

(*l*) *Robins. Gav.* b. 1. c. 5. p. 51.

But if it be pleaded that all lands *held by copy of court-roll, or parcel of*, the manor of *B.* descend to the youngest son, it would be otherwise; for the moment such lands become enfranchised, they would of necessity cease to be *copyhold*, and to be *parcel of the manor*; and, consequently, without the custom.

The *scite* of the lands cannot be changed; and, consequently, the custom attached to that *scite* must continue. But a custom attached to *the tenure of the lands* must be gone on the destruction of that tenure.

If the lord purchase a copyhold within his manor or borough, where the custom runs with the land, the descent, it is said, shall remain as before (*m*). But the consequence of this might eventually be curious. Suppose the manor to descend to the heir at common law, and the purchased lands to the younger son, and the lord die; now the manor would go to one person, and the

[67]

(*m*) See *Robins. Gavelk.* 70. 73. & *qu.*

freehold of the purchased lands to another; and so the demisable quality of the lands would for ever be gone: as the lord could not grant the lands of another person to be held of himself by copy, and the younger son is not lord of the manor to grant. But, if the manor and such purchased lands had gone together, the lands might have been granted by copy after the purchase (*n*). .

(*n*) *Ante*, vol. 1. ch. 2. p. [36].

[68]
What!

[60] later days the estate of the husband has been denominated his *curtesy*, while the term of *freebench* has been widow's estate.

On the widow or husband the estate on the death of widow or husband immediate tenant of the manor, and enfeoffed in homage as one of the *parens* the widow or husband was *bencher* (b): and hence the term (c).

But though the term of *Freebench* is now

Dower with "*Dower par le Courtesy*." Widowers or widows to have an abatement of rent. See Appendix, No. II. *Customs of Yetminster prima*.

(b) See *ante*, vol. 1. p. [272-4].

(c) Hence also the *bench* of judges, or justices, in the other courts: the *King's Bench*, and *Common Bench*, &c.

"Thou robed man of justice, take thy place;—
And thou his yoke-fellow of equity,
Bench by his side."

Shakespeare, *Lear*, act. 3. sc. 6.

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Curtesy.

{ 71 } The term of curtesy at once lost its original estate so denominated w
Littleton (e) and others a kingdom; and to exist in favour or *courtesy*. The term, therefore, in the last the estate which the husband hold property must be most as it is acknowledged and shall not have his curtesy but by *special custom* (f) only claim it by the particular manor, it is clear accede to it by the *curtesy* the curtesy of England is of the land, and always of the usage of a particular

(e) Sect. 35. So in many ancient by the curtesy is called tenant by
 " *Home qd tient PAR LA LEI DE*
Glo. 6 Ed. 1. cap. 3. & 5. Stat.
PER LEGEM ANGLIE, &c.

(f) 4 Co. 22. a. & b.

(g) See *ante*, ch. 2. of Custom cannot be applicable to the *curticular manor*, as the word *curticular* applicable to any other particular

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2 Freebench
only claimable
7 by custom.

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quently, where such custom exists, the estate she is to take must, both as to its quantity and duration, be such as the custom prescribes.

[73] The following observations, therefore, will be chiefly confined to those points in which freebench differs from dower at the common law.

Does not attach till the death of the husband.

Freebench then differs from dower at the common law, in that the former, unless the particular custom declares it to be otherwise (*k*), does not attach even in right

(*k*) By the custom of *Thornbury* in *Gloucestershire* and various other manors in the kingdom, the widow shall have her freebench "of all such customary tenements as her husband was at any time seised of during the coverture."

And note; a dying seised is not essential to entitle the widow to dower of lands in gavelkind, according to the custom of *Kent*. See *Robins. Gav. b. 2. c. 2. p. 172-3*. By the custom of *Marden* *al. Marwardine*, in *Herefordshire*, only the *mother of the heir*, and not any other wife of the deceased ancestor, shall have her freebench.

till the actual decease of the husband (*l*); whereas the right to dower at the common law, attaches immediately on marriage, and the widow is entitled to dower in lands of which the husband was seised *at any time during the coverture*, and, consequently, as the dowress becomes entitled immediately on marriage, or at least immediately on the husband's becoming seised after marriage, no alienation of the lands by him alone can defeat her right. But, with respect to freebench, it is wholly different. As the right of the wife does not attach, in the case of freebench, till the husband's death, any alienation by him alone, to take effect in his lifetime (*m*), though without any con-

[74]

How defeated.

(*l*) *Carth.* 275. *Benson & Scott.* 12 *Mod.* 49. *S. C.* 3 *Lev.* 385. *S. C.* 2 *Ves.* 633. *Hinton v. Hinton.* 2 *Atk.* 526. *Godwin v. Winsmore.* 2 *Durnf. & East,* 580. *the King v. the Inhabitants of Lopen.* And see 3 *Ves.* 256. *Brown v. Raindle.*

(*m*) For he cannot defeat her claim merely by devise; as the devise cannot take effect till his decease, when the freebench attaches. See *Co. Entries*, 123. a. 125. a. *Hill v. Hill.* But this must be understood of a devise good by special custom without a surrender to will (see ante, vol. i. p. [121]. [122].): for if a surrender be made,

[75] currence of the wife, whether it be surrender in court (*n*), by forfeiture (*o*), in consequence of enfranchisement (*p*), claim of the widow will be effectually and utterly barred (*q*).

And even if the husband make a lease for years, though by license of the lord the widow shall not avoid it (*r*). But in this case it must be remarked, that her claim to freebench is not defeated by reason of the husband's *not dying seised*, (though it should seem to be so urged in some of the books,) as he would most indisputably be *seised* in the present instance, *he being*

(which must be, of necessity, if at all, in his lifetime) the claim of the widow will be defeated and gone. of the relation of the devise to the surrender, *Co. l. 59. b. and ante*, vol. i. p. [104].

(*n*) *Benson v. Scott. ubi supra.*

(*o*) 1 *Freem.* 516. ca. 692.

(*p*) *Cro. Jac.* 126. *Lashmer v. Avery.*

(*q*) See the books referred to in note (*l*), p. [73].

(*r*) *Moore*, 756. *Holder v. Farley. Cro. Jac.* 36. by name of *Farley's case. Cowp.* 481. *Salisbury v. Cooke v. Hurd.*

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admittance of the surrenderee, though after the death of the husband, shall relate to the time of the surrender, and so precede the title of the wife (*z*).

[77] So if the husband become bankrupt, and die after the execution of the bargain and sale by the commissioners, and before the admittance of the vendee, the widow of the bankrupt shall not be entitled to her freebench (*a*).

And as it is so repeatedly said, that the husband must die seised, at least by relation, in order to enable the widow to claim, it may be proper here to observe, that there can be no disseisin of a copyhold (*b*); and, consequently, though a person should enter with strong hand into the copyhold premises, yet the copyholder would continue

(*z*) *Ante*, vol. i. p. [103]. 1 *Freem.* 516. ca. 692. And, by consequence, the widow of the surrenderee shall have her freebench, if he die before admittance. *Ante*, vol. i. p. [104].

(*a*) *Ante*, vol. i. p. [105].

(*b*) See *ante*, vol. i. p. [61-2].

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But a jointure of copyhold lands is not within the statute of 27 *Hen.* 8. cap. 10. sect. 6. (*d*). Yet it should seem, that, under certain circumstances at least, it may be a good bar in equity.

[79] And where a testator, reciting that he was seised of a copyhold, (though he was not so,) devised to his wife “in full satisfaction of all dower and right of dower or thirds, which she might have or claim in, or out of, his real estate,” and, after making his will, purchased a copyhold, it was held in equity that the devise extended to the freebench of his widow; and that she was, consequently, barred, or at least put to her election: freebench being “a customary right, *nomine dotis*, and so declared by *Bracton*, and instead of dower (*e*)”.

No freebench
of a trust.

It seems to be now settled, so far as “a cautious adherence to some hasty precedents (*f*)” can be conceived to have settled

(*d*) *Walker v. Walker, ubi sup. Gilb. Ten.* 182-3.

(*e*) *Ambler, 299. Warde v. Warde.*

(*f*) 2 *Bl. Comm.* 337. ch. 20.

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an use; and, therefore, as a trust is now what an use then was, she ought not to have dower of a trust. But it should not be forgotten, that it appears also, from the preamble to that very statute of Uses, that the husband should not, before that statute, have had his curtesy of an use: though we do not find the Chancellor, in *Chaplin and Chaplin*, noticing this latter circumstance. Now if the reasoning of his lordship was right as to precluding the widow from her dower, it should seem, to moderate capacities at least, that it would equally hold as to curtesy. And, indeed, though his lordship did not notice the preamble of the statute as to curtesy, but only as to dower, yet he honestly confessed that "he could see no reason for the diversity," nor should he have made it "himself." In short, it seems to be acknowledged, that the preclusion of the widow from dower of a trust does not depend upon the reason of the thing, nor upon "any well-grounded principle;" and, therefore, the reader may possibly conclude that it is high time to shut his book; or, at least, with a certain degree of modesty and prudence, to say with Lord

Loughborough (1), " I confess I think it so much settled, that it would be wrong to discuss it much !"

But, in the name of wonder, if the matter be wrong, why not set it right? If dower be a *moral* claim, and the *favourite of equity*, why should *equity* suffer " *some hasty precedents*" to come in its way? If an error has been made, can it be any reason why we should continue blundering to our lives' end? If the point be only questionable, let us meet it manfully, rather than warily shrink from a discussion. If the matter be grown too inveterate for the courts to interfere, yet, surely, if it be merely for the honour of the laws, and to preserve the appearance of consistency in our decisions, (to say nothing of the *morality* of the thing) some other aid should be had recourse to. Our ancestors were neither ashamed nor afraid to bring in occasional bills " for the amendment of the law."

[82]

However, though it be thus *settled* that a widow shall not have her freebench of a

But freebench shall be subject to a trust

(1) 1 Bro. Ch. Cas. 388. *Dixon v. Saville*.

[83] trust, it is settled also (*m*) that if she do take her freebench at law, she shall take it subject to a trust in equity. Thus another person shall not be a trustee for the widow, though the widow shall be a trustee for another person. So much for congruity; and so much for equity *favouring* dower!

But the instances in which the widow of a trustee shall be permitted to take her freebench at law, and in which she shall not be permitted to take her dower, do not appear to be properly distinguished. If an estate of *freehold* be granted to *A.* and his heirs in trust for *B.* and *A.* die, leaving an heir, his widow shall *not* be suffered to have her dower; because it would be wholly needless, as the estate would descend to *the heir* who is to perform the trust; and if the widow were permitted to claim, she would only incur an expense and assume a burthen without an emolument. But if a *copyhold* be granted to *A.* for life, in trust for *B.*

(*m*) See 2 *Ves.* 633-4. *Hinton v. Hinton.* 2 *Freem.* 71. *Bevant v. Pope*; and see *ibid.* 43. *Noel v. Jevon.*

and the custom of the manor be that the widow of the tenant for life shall have her freebench, and *A.* die, living *B.*, *A.*'s widow *shall have* her freebench; for if she do not take it, the estate would be at an end, as no one else could take it: and if there were no one to take it, the lord would be entitled by escheat; and so not be subject to the trust (*n*). But *the widow* shall be subject to the trust; as the trust shall be commensurate with the legal estate (*o*): and the legal estate would not be at an end till the determination of the freebench of the widow of *A.* (*p*).

[84]

A curious point would arise on this case, supposing *B.* to have left a widow also; for who then should be benefited by the trust? A widow we have seen (*q*) shall not have her

(*n*) See 1 *Just. Blackst. Rep.* 167. *Burgess v. Wheate*, and *ante*, vol. i. p. [216].

(*o*) *Ibid.* 162.

(*p*) See 1 *Lev.* 20. *Chantrell v. Randall*, and 1 *ibid.* 172. *Newton v. Shafto*, & 1 *Keb.* 925. S. C. 2 *Siderf.* 165. *Clarke v. Candle*.

(*q*) *Ante*, p. [79].

[85]

freebench of a trust; one widow, therefore, shall not be a trustee for the other: and, consequently, it should seem that the widow of *A.* shall hold for the benefit of the *representatives* of *B.* (*r*).

Freebench
against the lord
by escheat.

But the widow shall have her freebench against the lord by escheat (*s*); for the freebench is a continuance of the husband's estate; and, till the freebench expire, the lord's title cannot commence; for, till that event, he will have a tenant (*t*).

Grantee of
the freehold.

So if the lord grant the freehold of the copyhold premises to a stranger, and the husband die without heir, his widow shall

(*r*) See *ante*, vol. i. p. [216]. & [227]. *Goodright d. Langfield v. Hodges*.

But the widow of *B.* may, in such case, come in, by possibility, under the *Statute of Distribution*.

(*s*) So of dower at common law. *Bro. Dower*, 64. *Extinguishment*, 31. *Ten.* 33. *Watk. on Desc.* 83. *N. (n)*.

(*t*) See 1 *Leo.* 20. *Chantrell v. Randall*, & 1 *Will.* 172. *Newton v. Shafto.* 1 *Keb.* 925. *S. C.* 2 *Siderf.* 165. *Clarke v. Candle.*

have her freebench against the grantee (*u*). And even if the husband purchase the freehold, and have it conveyed to another in trust for him during his life, with remainder to himself in fee, the widow shall have her freebench (*x*): for there will be no enfranchisement or extinguishment (*y*) till the actual decease of the husband; on which event the title of the widow will be complete. But if an absolute enfranchisement or extinguishment take place in the lifetime of the husband, the widow can, of course, have no claim; as on such enfranchisement or extinguishment the premises must cease to be copyhold (*z*).

[86]

It has been already observed that a widow

(*u*) *Hob.* 181. *Howard v. Bartlet.* *Hutt.* 18. *Jurden v. Stone.* *Cro. Jac.* 573. *Waldoe v. Bartlet.*

(*x*) *Howard v. Bartlet,* and *Waldoe v. Bartlet, ubi sup.*

(*y*) See *Cro. Jac.* 126. *Lashmer v. Avery,* and *ante,* vol. i. p. [357]. [364].

(*z*) *Lashmer v. Avery, ubi sup.* and *Sir Wm. Jones,* 462. *Dugworth v. Radford,* and see 2 *Siderf.* 19. as to the extinction of custom on escheat, and *ante,* vol. i. p. [368].

[87] can only claim her freebench by virtue of a *special* custom, and that, consequently, it must belong to such custom to prescribe both the quantity and duration of her estate.

Widow to have the whole or a part as her freebench.

Thus, in some manors, the widow shall have the whole lands (*a*) of which her husband died seised ; and, in others, only a portion of them ; as the moiety (*b*), or a third (*c*), or a fourth (*d*) part. In some, she shall have a portion of the *rent* (*e*), and not of the lands themselves.

For what estate.

Again, with respect to the duration of her estate, she shall, by the custom of some manors, have the lands of her husband in fee : thus, by the custom of the manor of

(*a*) *Litt.* s. 37. *Kitch.* 102. a. 103. a. & b. 105.

(*b*) *Ibid.* *Kitch.* 105. a. *Robins. Gav.* b. 2. c. 2. p. 184.

(*c*) See 2 *Show.* 184. *Chapman v. Sharpe.*

(*d*) *Co. Litt.* 33. b. *Kitch.* 105. a. *Mich.* 21. *Ed.* 4. pl. 22. fol. 54. a.

(*e*) *Kitch.* 102. b. *Customs of West-Sheen, &c.* art. iv. 2 *Coll. Jurid.* 382.

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[88]

this may possibly be supposed to differ from *freebench* in the nature of dower, or *in nomine dotis* according to *Bracton*.

[22] In many manors she shall have her freebench for life (*g*) ; in others only during widowhood (*h*) ; and in some under the additional restriction of chastity (*i*).

and in default of issue, to the issue of the first husband ; and in default of issue of such first husband, to the heirs (*sub modo*) of the second. But this custom was altered by the private act of the first of Charles the First, cap. 1.

By the custom of some manors in Westmorland, the estate vests absolutely by the intermarriage. *Per Lord Loughborough, in Compton v. Collinson, 1 Hen. Blackst. 343.*

(*g*) 1 *Lev. 20. Chantrell v. Randall, &c.*

(*h*) *Fitzh. Prescript. 59, Kitch. 105. a. & b.*

(*i*) See *Robins. Gavelk. b. 2. c. 2.*

So in the manors of *East and West Enborne, in Berkshire* ; where there is a ludicrous mode of atonement prescribed ; on complying with which the widow shall be re-instated in her lands. And the same custom is said to prevail in *Tor, in Devonshire, &c. &c.* See *Comp. Copyh. tit. Enborne, &c. Cowell & Jacob, tit. Freebench.* [Entries on the rolls of a manor-court, of admissions of tenants in remainder, after the determi-

Freebench
is a continu-
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husband's
estate.

When the
widow may
enter before
admittance.

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[90] on her, as it does on the heir in cases of descent (*l*).

When not,

Assignment.

Plaint.

But when the widow takes a *portion* only of the lands, it should seem that the possession is not cast upon her any more than at common law ; and, consequently, that she will not be warranted in entering without assignment. And as she shall hold that portion of the lord, and not of the heir as at common law (*m*), it should seem also that the regular mode for her to obtain assignment is by plaint in the lord's court (*n*).

(*l*) See *ante*, vol. 1. p. [247]. and the books there cited ; to which add *Hob.* 181. *Howard v. Bartlet.* *Hutt.* 18. *Jurden v. Stone.* 5 *Burr.* 2787. *Vaughan d. Atkins v. Atkins.*

(*m*) See *post.* ch. vi. Of Heriots.

(*n*) See *Watk. on Desc.* 81. and note xxv. to *Gilb. Ten.* 373. 2 *Show.* 184. *Chapman v. Sharpe.* *Kitch.* 103. b. and 4 *Co.* 30. b. *Shaw v. Thompson.*

And, therefore, it is said to have been adjudged a good custom, that if the widow should not claim her freebench within a year and a day, she should not have it. 3 *Leon.* 227. *Ca.* 303.

So of gavelkind lands, of which the widow shall

And if the widow bring such plaint and [91]
 have judgment, she shall also recover da- Damages.
 mages according to the statute of *Merton*.
 For it has been determined that copyholds
 are within that statute in this respect ; and
 that the manor-court may award damages
 under that act as far as the demandant is
 damnified, whatever the amount may be (o).

Of admission to the estate taken in free- Admission,
 bench, and the consequent fine, I have spoken &c.
 at large in the preceding volume (p).

have a moiety, she must demand her dower of the heir ;
 and shall have it assigned by metes and bounds. See
Robins. Gavellk. b. 2. c. 2. p. 175, &c.

(o) *Cro. Eliz.* 426. *Shaw & Thompson.* 4 Co. 30. b.
S. C. Moore, 410. *S. C. Gilb. Ten.* 183-4.

(p) p. [272]. & [299].

OF CURTESY.

[92] OF the husband's estate or customary curtesy little remains to be said. Like the estate of the widow, or that of freebench, it is claimable only by *special custom* (*q*); and, consequently, it must equally belong to such custom to regulate it, both as to its quantity and duration or extent.

Thus, by the custom of some manors, he shall have the whole (*r*) of the lands of which the wife died seised of an estate of inheritance. In others, he shall only have a moiety (*s*), or other portion.

(*q*) 4 Co. 22. a. & b. By the custom of Marden *al.* Marwardine, in the county of Hereford, the husband has no curtesy, though the widow, (if mother of the heir,) shall have her freebench.

(*r*) 1 Anders. 192. *Ewer v. Astwicke.*

(*s*) See Robin. Gavelk. b. 2. ch. 1.

In cases where he is to take the *whole*, [93]
 he may enter, &c. before any admittance (*t*);
 but in those in which he is to take a *por-*
tion only, it seems evident that an assign-
 ment is as requisite as in those cases in
 which the widow takes a portion as her
 freebench (*u*).

Again, in some manors, the husband
 shall have the lands of his wife for life (*x*);
 and, in others, only while he remains un-
 married (*y*).

Curtesy by the custom differs from that
 by the common law also in this; that, if the
 custom does not expressly require the having
 issue, the having issue is not essential to give
 him title to the estate (*z*).

(*t*) *Ante*, vol. 1. p. [247].

(*u*) See *ante*, p. [90].

(*x*) 1 *Anders*. 192. *Ewer v. Astwicks*. *Moore*, 271.
Ewer v. Aston, S. C.

(*y*) See *Robins. Gavelk.* b. 2. ch. 1. p. 136.

(*z*) *Ante*, vol. 1. p. [273-4]. & *Robins. Gavelk.* b. 1.
 ch. 1. p. 136. 150.

[94]

But, in order to entitle the husband to his curtesy, it should seem to be equally necessary that the wife should die seised, as it is that the husband should die seised; in order to entitle the widow to her freebench*. But, as the wife is *sub potestate viri*, his title cannot, of consequence, be defeated or prevented by her alienation, as the widow may be prevented from claiming by the alienation of the husband in his lifetime (a):

In Sir John Savage's case (b) it was adjudged, that, where the custom is that if a person takes to wife any customary tenant of such manor, and have issue, and survive his wife, he shall be tenant by the curtesy; that he shall not be tenant by the curtesy if the wife was not a customary tenant of the manor *at the time of marriage*, though

* [In case of her having taken by descent, there is no necessity for her having been admitted. *Vid. sup.* vol. 1. p. [244-5].]

(a) See *ante*, p. [74].

(b) 2 Leon. 109.

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[96]

CHAP. IV.

GUARDIANSHIP.

[96]

proclamation
of the heir
claim.

issue on
re-claim.

IT has already been noticed (*a*), that when copyholds became inheritable, the lord, on the death of his tenant, made proclamation for the heir to claim the premises of which such tenant died seised: and in case the heir did not claim on the third proclamation being made in court, the lord might resume the possession of the lands till such claim was duly substantiated, and that within a definite period, which, according to the old law, was a year and a day.

[97]

homage.

Till the year and day had actually elapsed, the heir could demand the lands, and the lord was obliged, on such claim, to re-

(*a*) Vol. 1. p. [230], &c.

are the year and day to be computed from the last (or third) proclamation? But, if so, by what law is the time postponed?

Infant heir
not bound by
non-claim.

Age of ma-
jority.

If, however, the heir was an infant, he was not bound, though the year and day had actually elapsed; he was not foreclosed till he attained his majority (*d*), which was fixed by the ancient law (where a special custom did not interfere) at fourteen (*e*); though as the age of twenty-one became afterwards the age of majority as to the

and his heirs pay absolute fines, &c. for a contingent or conditional estate? If he seize, and grant to A. and his heirs, it will be evidence that the lord seized absolutely, and not *quousque*, and consequently illegally, except there be a custom to seize absolutely. See 3 *Durnf. & East*, 172. *Doe d. Tarrant v. Hellier*. But does this follow as a consequence? I admit that three proclamations must be made, and that a year and a day must elapse, (say from the last proclamation,) before the lord can be warranted in seizing absolutely, without a special custom: but I think the right of the lord to seize absolutely after such year and day, and three proclamations, though without a special custom, is unquestionable.

(*d*) *Ante*, vol. 1. p. [234].

(*e*) *Watk. N. cxliv. to Gilb. Ten.* 463.

tenant by knight-service (*f*), and as the tenure by knight-service was the chief and most honourable tenure, the same age was, as to many purposes, at length affixed as that of majority as to persons who had nothing to do with the bearing of arms; to tenants in socage; to bondmen; and even to females (*g*),

[99]

Hence the infant copyholder was to be out of ward at fourteen, and yet he was not to be accountable * for his acts till one-and-twenty!† So rapidly do absurdities accumulate when principles are forsaken!

(*f*) *Ibid.* & N. 1. p. 339.

(*g*) See *Westm.* 1. cap. 22. at the end, "until they shall have accomplished the age of a male; i. e. 21." And see the *Mirroure*, ch. v. s. 2. *Of the Defects of the great Charter.*

* But see vol. 1. p. [337]. But note, it is said "to the disherison of the lord." It does not seem so as to non-admission, before the stat. of 9 Geo. See the old cases of infants.

† In ancient days, a person was to answer *when he attained his age*, whether 14, 15, or any other period. See *Robins. Gav.* b. 2. c. 3. p. 185. 221-2-3. and the authorities there cited. And see the cases cited by him in 221, from the Year-books, from which it appears

Guardian in
chivalry.

If the deceased tenant had held in chivalry, or by military service, the lord was entitled, without account, to the profits of the lands during the minority of the heir; as the heir was, during that period, incapable of rendering the returns. The lord, therefore, having no services performed, was authorized in resuming the lands, as the consideration of his gift had failed (*h*).

[100]

Guardian in
socage.

With respect, however, to socage tenure, the infant could perform his services by

that the judges at least, so early as the time of Edward the Third, were for making the age of 21 the general age. See *M. 9 Ed. 3. f. 38. a. pl. 40.* Where the king's courts would not suffer the heir in gavelkind to answer there, (*i. e. in the courts above,*) unless he was of the age of 21. But it does not follow from this that he ought not to answer in the manor-court when of the age of 14, 15, or any period when he was to be out of ward by the custom of the manor. See *M. 11 Hen. 4. 29. b. pl. 55.* and *Tr. 16 Ed. 2. Maynard, 478-9. pl. 2.*

The *Mirreour* says that women were to have their age when of 14. Cap. 5. s. 2.

(*h*) See *Watk. on the King's Claim as Guardian of the Duchy of Cornwall*, p. 8.

Of copy-
holders by
custom.

[101]

assign the custody of the lands to another without account, has been held good (*m*).

Without
custom,

But unless a *special* custom to the contrary, (and we may that a special custom must avail him who would avail himself the lord is obliged to admit the due claim, by that person who kin of such infant to whom it to which he is so admitted descend (*o*).

[102]

Hence it is often said that the guardian in socage is entitled also to the wardship of the infant who holds by copy (*p*). But this position may not always hold, as the copyhold may descend very differently from the lands in socage at common law; and so, by

(*m*) 1 *Leon.* 266. ca. 357. 20 *Elix.* in C. B.

(*n*) *Ante*, ch. ii. p. [57].

(*o*) 2 *Roll. Abr.* 40. *Gardien*, (P) pl. 1. *Eglaton's case*. *Co. Copyh.* a. 59. *Tr.* 136. See 2 *Latw.* 1189. 1190. *Church v. Cadmore*. *Hob.* 215, 16. in *Cocks v. Darson*. *Hutt.* 16, 17. 2 *Ves.* 303. *Harg. N.* (13) 19 *Co. Litt.* 88. b.

(*p*) See *Roll. Harg.* &c. *ubi supra*.

1

7

7

6

6

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7 Under the
stat. 9 Geo.
6 for admit-
tance.

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2

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7

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2

1 [103]

.

2

3

-

lord to do? Is such case within the equity of the statute? Or is not a proper distinction made by that act? For, in the cases of descent and last will, the lord can have no tenant *till their admittance*, as the former tenant (the ancestor or testator) is no more; while, in the other case, the lord has a tenant without their admission, as the surrenderor continues, till their admission, the actual tenant of the lord*.

Under the
stat. of *Car.*
2. by will.

[104]

We have seen that by virtue of a *special custom* in a manor, the lord may be entitled to the profits of the lands of his infant copyholder, or assign the guardianship to whom he pleases; but that if there be *not* such a special custom, the guardianship belongs to the next of kin of the infant, to whom the copyholds cannot descend: hence a distinction presents itself as to the solution of the question, whether a father can, under the statute of Charles the Second (*r*), appoint a guardian by his will as to the copyholds of his child?

* And see *Carth.* 44. [See also 13 *Ves.* 240. *Lord Kensington v. Mansell*; and *supr.* vol. i. p. [320]. note *.]

(*r*) 12 *Car.* 2. cap. 24. s. 8. & 9.

withstanding the custom *, it should seem also that the father may, by that statute, appoint a guardian of the *person* of his child, if he cannot affect his copyhold property (*x*).

Duties of the guardian.

The duties of the guardian, with respect to the copyholds of his ward, are twofold. In the first place, it is his province to cultivate and manage the lands as may be most advantageous for the infant. And, for this purpose, he may make such a lease † as is warranted by the custom, so it exceed not the minority of the ward ; and maintain debt for the arrears of rent (*y*).

[106] In the next place he is to render such returns to the lord as a copyholder may

* *i. e.* Supposing that the infant had lands in socage also, for the tenant in socage could only have the wardship of the *body* in respect of the lands.

(*x*) *Watk. ubi sup.*

† See *Hutton*, 16, 17. and 1 *Lord Raym.* 131. in *Wade v. Baker & Cole*.

(*y*) See *Dyer*, 303. a. *Marg. Sowper v. Goodbody*.

of *Merton* (*d*), but are still obliged to do suit in person, though another may essoign the copyholder (*e*).

Forfeiture of
the wardship.

When a woman takes husband, she must be answerable for him ; it is her own act. If he commit waste, or refuse the services, it will be a forfeiture of her lands (*f*). But the infant is not answerable for the acts of his guardian, as the guardian is not of his own choice ; the infant wanting discretion to choose, and the law assigning the individual. If the guardian, therefore, commit waste, the wardship only, and not the lands, shall be forfeited (*g*). Besides, the interests of the husband and guardian are wholly different ; the former is entitled to the profits to his own use, the latter only receives them to those of his ward, and is accountable for them to him.

[108]

If the guardian do any act which is incon-

(*d*) 2 *Inst.* 100. & *post.* ch. vij. Of Suit.

(*e*) 1 *Leon.* 104. *Sir John Braunché's case.*

(*f*) *Ante*, vol. i. p. [338-9].

(*g*) *Ante*, vol. i. p. [339].

ed in him, or if
lful the duties of
his wardship ; for
r the benefit of
er any advantage

instances in the Revocation
of wardship.
especially in the

formal revocation
ad been assigned
aforesaid *A. B.*

ons on which the
s aforesaid ; but,

in him, the said
customary lands

power in that
efore the custody

fant, and of his
ore committed to

s accordingly, by
revoked, and, to

ly and absolutely

[109]

APPOINTMENT OF GUARDIAN (*h*).

“ AND BECAUSE the said *A. B.* is an infant (to wit) of the age of two years, or thereabouts, the wardship or custody [as well of the person of the said *A. B.*” (*If the custom be such*) “ as] of the copyhold or customary tenements to which he has at this court been admitted, is granted unto *C. D.* his next of kin, to whom the same tenements cannot, according to the custom of the said manor, descend, until the said *A. B.* shall attain his full age, according to the custom of the manor aforesaid (*i*) : HE

(*h*) Such guardian, if ejected, may have an *ejectione custodiæ*, or at least an action in the nature of it.
 1 *Leon.* 328. *Cole v. Walles.* *Cro. Eliz.* 224. S. C.

(*i*) The age of majority differs in most manors. In some it is fourteen, in others fifteen, &c. In modern entries we frequently find the wardship committed till twenty-one. But these latter instances seem to have crept in through error from the circumstance before noticed (the age of the military tenant) : for, at the time in which our customs commenced, (and a custom must certainly have had a beginning, though we cannot at this day trace it, see *Davy's Rep.* 32. a.) the period

121

[110]

CHAP. V.

OF LICENSE.

[111]

What.

A LICENSE is an express authority given by the lord for the time being, to the copyholder, to do an act which such copyholder would not be warranted in doing by the common law or the custom of the manor ; as to demise the copyhold for years, or to fell timber, or the like.

Who may
grant a li-
cense.

Lord having
a particular
interest only.

And as such license is only an authority, it must necessarily cease with the existence, or interest, of the lord who grants it. If a lord who is tenant for years, or for life only, of a manor, therefore, grant license to his copyholder to lease for years, and die, or his interest in the manor expire, the license becomes void, and the term of years created in consequence of such license must cease

[112]

Lord by
wrong.

[113]

seem, from the very nature of the thing, that no license granted by a wrongful lord can be good.

Lord by right cannot affect the freehold, except as to his own interest.

But, though the rightful lord may *dispense with a forfeiture*, as to the lord in remainder, yet he cannot exert any ownership over *the freehold*, save only as to his own interest. He may grant a copyhold in fee, though he be only tenant at will himself; for the grantee would be in by the custom, which is paramount the interest of the lord (*f*). Yet, when the copyholder does any thing under the immediate authority of the lord, and not by the custom, he must be regulated by the authority which such lord can give. The *grantee of a copyhold* comes in under the custom, and takes only a *copyhold* interest; he meddles not with the *freehold* or *inheritance* of the premises. But a *lease by license* is a *common-law* interest (*g*): it may endure longer than the interest of the copyholder himself; as, in the case of

[114]

(*f*) *Ante*, vol. 1. ch. ii. Of Grants.

(*g*) See *ante*, vol. 1. p. [301]. and *post*. [121].

interest, as he would act with the privity of his lord ; but it should seem that the lord in remainder may have his remedy over against the particular or licensing lord, as the lord in remainder had a property in the trees ; and perhaps may have an injunction to stay the felling, if the timber be not actually cut, though the particular lord could not have such injunction against his own act (*k*).

[116] In the case of *Pettie & Debbans* (*l*), it was adjudged, according to *Rolle*, that a lord, who was only a tenant at will of the manor, could not grant a license to his copyholder to lease for years. And, indeed, as the rule seems to be that a lord cannot give license to make a lease for a longer time in the tenancy than the lord himself has in the seigniorship or manor (*m*), it must be evident, that a tenant who holds only at will cannot give license to create a term of years. Yet it may be at least very doubtful, if such tenant at will (he being the lord *pro tempore*)

(*k*) See 3 *Ves.* 3. *Wentworth v. Turner*.

(*l*) 1 *Roll. Abr.* 511. *Copyh.* (K). pl. 1.

(*m*) 2 *Brownl.* 40. *Petty v. Evans*.

steward cannot, *virtute officii*, grant license to demise, though in full court and in the name of the lord, unless there be express words in his patent to enable him to do so, or by special authority given him by the lord, or by some particular custom; and this doctrine of Sir *Edward Coke* is adopted by the late *Chief Baron Gilbert* (o).

The copyholder must pursue his license.

[118]

The copyholder must pursue his license, as the license is in the name of an authority. If he have a license from *Michaelmas* last, and he has not taken it by *Christmas* next, the lease will be void (p). So, if a copyholder

(o) *Ten.* 333. But see *Kitch.* 85. a. *contra*.

And, even granting the law to be with *Lord Coke*, it should seem that any act of the lord, or even his acquiescence, after the granting of such license by the steward, (the lord being apprized of such license,) would amount to a confirmation of it. As if the lord sign the court-book, in which an entry of the license be made, or if he receive the fees on license, &c. And besides, the copyholder, on applying for license in full court, is surely not obliged to *crave oyer* of the steward's appointment.

(p) *Cro. Eliz.* 395. *Jackson v. Neale*.

[119]

License on
condition.

The lord may grant a license on a condition *precedent*, as it will not properly operate as a license till the condition be performed ; but he cannot grant a license on a condition *subsequent*, as he gives nothing, but only dispenses with the forfeiture ; and the estate passes from the copyholder, and not from the lord ; and the lord cannot annex a condition to the estate of another person (*t*).

License to
demise for
life not good.

But the lord cannot enable his copyholder, who, in law, holds only at will, to demise for *life*, though a custom be alleged to support it (*u*).

[120]

License to a
tenant in tail.

It is said that if the lord grant a license to a tenant in tail to demise for twenty years, and the tenant in tail demise accordingly, such demise shall not *bind the issue* in

(*t*) *Popham*, 105-6. *Hall v. Arrowsmith*. *Cro. Eliz.* 461-2. S. C. by the name of *Haddon v. Arrowsmith*.

(*u*) *Godb.* 171. ca. 236. And an estate for *life*, by license, would be a *freehold* interest.

Agreement
for license.

Custom in
case the lord
refuse license.

[121]

Term under a
license is a
common-law
interest.

FORMS OF LICENSE.

License to demise.

(In Court.) “ Also at this court, license was granted to *A. B.* one of the customary tenants of this manor, to demise and let ALL that, &c. unto *C. D.* [or ‘ unto any person or persons at his pleasure,’] for any term not exceeding eleven years, to commence from the day of next. And the said *A. B.* paid unto the lord for such his license a fine of three shillings and eight pence, being four-pence for each year of the said term.”

[122]

If out of Court, say,

“ Manor of } “ Be it remembered that, on
 “ Fairhurst. } the day of in the
 year, &c. license was granted by me, *E. F.*
 lord of the said manor, unto *A. B.* one of
 the customary tenants of the same manor, to

on condition that the real annual value be reserved; in
 case of *forfeiture* or *escheat*.

to. unto *C. D. &c.*
 years, to commence
 Michael the Arch-
 and the said *A. B.*
 a fine of ———”
 “ *E. F.* ”

the consequence of the
 to insert covenants

the executors, adminis- Covenants in
 not, nor will, do, a lease under
 suffer, to be done, license.
 ing whatsoever, by
 ate and interest of
 eirs, or sequels, in
 or any part or parcel
 ise be forfeited or

his heirs, executors, [133]
 ne or one of them,
 e to time, and at all
 ge, or, upon reason-
 less and indemnify,
 itors, administrators,
 ainst all rents, dues,

duties, and services, from henceforth, during the said term, to be paid, rendered, or performed, to the lord or lords of the said manor for the time being, for, out, or by reason of the said demised premises, or any part or parcel thereof."

License to fell Timber.

" Also at this court license was granted to *A. B.* one of the customary tenants of this manor, to fell, within six calendar months from the sitting of this court, twenty oak trees now growing on a certain tenement called *C.* within the manor aforesaid, and already set out and marked by the woodward or reeve of this manor [or "to be forthwith set out and marked by the woodward or reeve of this manor,"] as [124] in such cases used and accustomed, for the purpose of repairing the buildings and fences of, or belonging to, the said tenement. But he paid no fine for his license, by reason that the said trees were assigned for botes."

" ——— to fell, within six calendar months from, &c. two hundred oaks, eighty elms, forty-eight ash trees, and twenty-two beech trees, now growing on certain tenements called

the manor aforesaid,
 . *B.* [or ' forthwith
 l by the woodward
 in such cases used
 same to convert to
 l dispose of at his
 int to be rendered
 nevertheless that
 nd to the felling
 growing in or near
 es of the Well-croft
 he Boundary-oaks;
 Arthur's-oak ; nor
 he walk or avenue
 nd the said *A. B.*
 or such his license,

[126]

And, for such his
 to pay to the lord
 ndar months after
 , the sum of three
 every ton of timber
 contain, according
 ured by the wood-
 r, as in such cases

CHAP. VI.

OF HERIOTS.

[126]

Nature and
history of
heriots.

THAT system which we usually denominate the feudal, while it anxiously provided for the liberty of the individual, was admirably calculated for national defence. Each freeman was a soldier (*a*), and was obliged to render to his country his services in war. He was to be provided with arms, according to the usage of the times and the rank which he bore, not only for personal, but for national safety.

Military
heriot.

In these arms the society was interested (*b*); and, when the tenant died, they

(*a*) *Vide LL. Gul. cap. 65. ap. Seld. ad Eadmer. And see Watk. Introd. to Gilb. Ten. & Note i. p. 339.*

(*b*) *See Gilb. on Distresses, 9. 2 Bl. Comm. 66. Si quis hæc arma habens obierit, arma sua remaneant*

devolved to his superior, to his immediate lord, that they might continue to be used in the defence of the state ; and hence the origin of the *heriot*. [127]

We find the heriot either expressly noticed or alluded to in most of the Gothic codes (c) ; and from the northern nations have we also derived the term (d).

hæredi suo. Si vero hæres de tali ætate, non sit quod armis uti possit si opus fuerit, ille qui eum habebit in custodia, habeat similiter custodiam armorum, et hominem inveniet qui armis uti possit in servitio domini regis, si opus fuerit, donec hæres de tali ætate sit quod arma portare possit, et tunc ea habeat. Assisa de armis habend. in Anglia. 27 Hen. 2. Rog. Hoveden, sub. ann. 1181. fol. 350. a. Script. post Bed. and Spelm. Codex legum vet. &c. Wilk. Leg. Anglo-Sax. 333.

(c) *LL. Longob. lib. 3. Tit. 8. s. 4. Lindenbrog. Cod. Leg. Antiq. 679. LL. Canut. cap. 69. & 75. apud Lamb. & Wilk. Compare LL. Can. c. 69. & LL. Gul. c. 22, 23, 24, & 29. (apud Wilk. LL. Sax. Seld. ad Eadmer. & Kelh. Norm. Dict.) & LL. Hen. 1. cap. 14. (ap. Wilk. & Lamb.) & Domesday Book: Berchescire, tit. Walingeford, & Herefscire, tit. Hereford Ciritate, & Arcenefelde.*

By the 75th law of *Canute*, the heriot was not to be accounted for when the tenant died in battle.

(d) From *þepe* (*Exercitum*) & *gear* (*fusus*). *Bel-*

Commuted.

[128]

As the feudal system declined, the heriot was frequently commuted ; and the lord received a sum of money instead of a portion of arms, horses, or habiliments of war. Such was the usage of *Normandy* before the conquest of England (*e*) : and although *William* ordained the rendering of arms (*f*), yet we find the payment in money usual in the time of *Henry the Second* (*g*), and required in that of *John* (*h*).

Confounded
with the
relief.

The heriot was often confounded with the relief, though, in fact, they differed essentially. The heriot was paid on the

licus apparatus ; provision for war. *Vide Spelm. Gloss. voc. Hereotum. Somner's Sax. Dict. v. þenegeat, Gloss. ad Willk. LL. Sax. v. þene-geat. Fortesq. Mon. Pref. lvii.—lix.*

(*e*) *Grand Coustumier de Norm. cap. 34. de Relief. f. 56. b.*

(*f*) *LL. Gul. Cap. 22, 23, 24.*

(*g*) *Vide Glanv. Lib. 9. cap. 4. fol. 143-4. Ed. 1780. & see Lord Lyttleton's Hist. Hen. 2. b. 2. N. to p. 100. vol. 3. p. 325. 330, 8vo. ed.*

(*h*) *Mag. Cart. Reg. Johannis. cap. 2. ap. Blackst. in which the relief spoken of is called the ancient relief : "per antiquum relevium."*

determination of the tenancy—the relief on the accession of the heir (i).

From analogy to the proper or military Villein-heriot, heriot, was the heriot of the villein or husbandman demanded. In the case, indeed, of an absolute or pure villein, as his lord was, in strictness, the owner or proprietor of his chattels, the heriot, when taken, was, in truth, an indulgence, as it amounted to a relinquishment by the lord of the rest of the property (l).

[139]

As the military tenant was to render his warlike accoutrements, so the husbandman or socage tenant was to render his best beast (m). The former were neces-

(i) *Vide Spelm. Gloss. v. Hereotum. Co. Copyh. s. 25. Tr. 33-4. Fitzh. Hariott. pl. 6.*

(l) See 2 *Bl. Comm.* ch. 6. p. 97.

(m) "*Si Lib. Ho. ibi moritur, Rex ht. Caballu. ej. cu. Armis. De Villo. cu. morit. ht. Rex 1. Bove.*" *Domesday Book. Herefæire, tit. Arconefelde.* The villein had no arms to render. *Vide LL. Gul. c. 65. Seld. Eadm. 192.*

LL. Gul. cap. 29. De relief a vilain. Lo meillur Aveir quil avera u Chival, u Buf, u Vache, donrad a son seignor de relief.

sary for the continuance of the national defence, and the latter was to be used for the purposes of agriculture. The villein-heriot, however, differed in different manors (*n*), as it depended upon reservation, or some agreement which afterwards ripened into custom.

[130]

Whether
originally
gratuitous.

We are told by *Bracton* (*o*), *Fleta* (*p*), and *Britton* (*q*), (who by the way scarcely differ in their description) that the heriot was originally a voluntary or gratuitous bequest of the tenant. But I apprehend that this must be understood merely of the heriot of the husbandman (*r*), and not of the military heriot; since we find the latter fixed as a right, as a legal duty, at least so early as the time of *Canute the Great*, confirmed in that of *the Conqueror*, and acknowledged in the charters of *Henry*

(*n*) Sometimes it was the best *dead* good, without any relation to agriculture. See *post*, p. [138]. [142].

(*o*) *Bract. lib. 2. cap. 36. s. 9. fol. 86. a.*

(*p*) *Fleta, lib. 3. cap. 18. fol. 212.*

(*q*) *Britt. cap. 69. fol. 178. a. (493).*

(*r*) And see 2 *Black. Comm.* 423.

the First, John, and Henry the Third. In some Saxon wills, indeed, we find express bequests of an heriot to the lord (s): but such instances seem only from abundant caution that the testators might not appear unmindful of their lord, and to prevent the chattels of the deceased from passing into other hands, and especially into those of the church; since it is evident, from the very bequests referred to, that, though the heriot was expressly directed to be paid, it was considered as the lord's "*right*." [131]

Having thus cursorily traced the origin and history of heriots, I shall proceed to the law relative to them, as it appears to be acknowledged at this day.

Heriots, then, are divided into heriot-custom, and heriot-service. Division of heriots.

Heriot-custom is that which is due by Heriot-custom.

(s) " ——— eperz mine Lhouenbe hyr ruzte beruz." *Will of Wolgith, A. D. 1046. Somn. Gav. App. 211.* And see *Lamb. Peramb. Kent, 493.* Will of Byrhtrice & Elfwyðe.

[132]

virtue of an immemorial usage of a certain place or district, precinct or territory ; as within the manor of Fairhurst. The custom by which it is due is, like all other customs, local (t), i. e. is relative to the place within which the heriot is claimed, and not merely relative to these or those particular lands for which it is payable. Thus, an heriot due on the death or alienation of every tenant of the manor, is an heriot-custom (u). It is not due on the death of A. B. merely because he died seized of Black-acre rather than of White-acre, or of White-acre rather than of Green-acre, but because he was a tenant of the manor generally. It is not due by reason of the particular or specific grant of Black-acre ; it is not due by reason of a particular or express reservation ; but only and immediately by reason of the usage immemorially existing within the manor of which the premises are held.

(t) Co. Litt. 33. b. & 113. b. & ante, ch. ii. Of Customs, p. [55].

(u) See Kitch. 133. a. & b. & the cases there cited from the Year-books. Co. Copyh. s. 24. Tr. p. 24. 2 Bl. Comm. 422. ch. 28.

This species of heriot is said (*x*) to lie in *prender*, and not in *render*; for it is not, by the terms, *a service*, or in the nature of *a rent*. It may be due on the death or alienation of a tenant for life or years, as well as on that of a tenant in fee-simple (*y*). [133] It may be payable on the *death* of a tenant only, or on his *alienation* only, or on either of those events, according as the usage prescribes (*z*).

Heriot-service is always due by a particular and express *reservation* in the grant or lease (*a*); or is claimed by prescription, which implies, or supposes, or presumes, such grant containing such reservation (*b*); and therefore lies in *render* (*c*), being in the

Heriot-
service.

(*x*) *Co. Copyh.* s. 25. *Tr.* 33. & 3 *Bl. Comm.* 15. ch. 1.

(*y*) *Hil.* 21 *Hen.* 7. fol. 13. a. pl. 15. & see *Kitch.* 133. a. & b.

(*z*) *Vide Hil.* 8 *Hen.* 7. fol. 10. a. & b. pl. 3. *Kitch.* 133. b.

(*a*) *Co. Copyh.* s. 24. *Tr.* 24. 3 *Salk.* 332.

(*b*) See *Gill.* on *Distresses*, 8-9. & post. [134], &c.

(*c*) But it seems to be now settled that it lies in

[134] nature of a rent (*d*), or founded in ancient tenure (*e*); and, consequently, is incident to, and shall always follow, the reversion, if the grant be for a particular estate; or the seignior, if the grant be in fee (*f*).

It is said in some of the ancient books that this species of heriot is due only on the death of a tenant in fee simple (*g*). But, as it is due by *reservation*, it is manifest, that it may be reserved on the grant of a less estate (*h*). Perhaps a distinction may be thus made: if the heriot be claimed after the death of a tenant for life or years, who was in *by the grant of the lord*, the lord

prender also. See *post.* & *Cro. Eliz.* 32. *Sir John Peter v. Knoll.* 1 *Show.* 81. *Parker v. Gage.*

(*d*) 2 *Keb.* 677. *Lemal v. Cara.* 2 *Saund.* 165. S. C.

(*e*) *Kitch.* 133. b. 1 *Show.* 81. *Parker v. Gage.* *Gilb. Distresses,* 9.

(*f*) *Roll. Abr. Heriot,* pl. 1. 2 *Saund.* 165. *Lanyon v. Carne.* 2 *Keb.* 505. 677, &c. 3 *Salk.* 181. *Osborne v. Sture.* *Ibid.* 332.

(*g*) *Hil.* 21 *Hen.* 7. pl. 15. fol. 13. a. & pl. 24. fol. 15. a. *Keilw.* 84. a. & b. & see 3 *Salk.* 332.

(*h*) 2 *Saund.* 165. *Lanyon v. Carne,* &c.

must shew the deed by which it was reserved, or otherwise prove the express reservation: but if the grant of the lands was so distant that the deed of creation cannot be shewn, nor the precise terms of reservation be otherwise proved, the lord must prescribe (i); for it is not (by the terms) due by custom, as it is only claimed on the death of the tenant of particular lands (k), and not on the death of the tenants, generally, of the manor. And as the grant must of necessity have been in fee, (for any particular estate must be of known beginning, as well as of definite continuance and termination), the heriot shall be considered as due only on the death of such tenant in fee. And no mischief could here ensue: for if the *tenant* in fee should make a grant or lease to another in tail, for life, or for years, the donee, grantee, or lessee, would be tenant to *the donor, grantor, or lessor*; and no heriot would be due on *his* death;

[135]

(i) See *Gilb. on Distresses*, 8-9. 3 *Salk.* 332. *Kitch.* 134. a.

(k) *Vide Hil.* 21 *Hen.* 7. pl. 24. fol. 15. b. 16. a.

but the *donor*, or *tenant in fee*, would still continue *tenant to the lord*; and therefore, on *his* death, the heriot would equally be due. So that the lord would not be deprived of his rightful and original heriot, nor should the heriot be multiplied in prejudice of the donee or grantee. And although the tenant

[136] in fee should thus part with the possession of the premises, yet, as the heriot is an heriot-service, the premises would be still subject to a distress (*l*).

But if the tenant in fee grant to *A.* for life, or in tail, *with remainder over in fee to a stranger*, so that the whole fee pass from the grantor, there *A.* the particular tenant, shall hold *of the lord*, and not of him who made the grant or gift (*m*).

The heriot here, then, is due on the death of that person who is tenant *to the lord*, and not on the death of him who is tenant *to*

(*l*) See *post*.

(*m*) *Bro. Ten.* 21. *Dyer*, 362. b. pl. 19. 2 *Inst.* 505. *Co. Litt.* 21. b. *Godb.* 18. *Webbe & Potter*.

that (the lord's) *tenant*. And here, therefore, a distinction again arises with respect to those who take *a portion of the fee* by the *act of law* or by the *act of the party*. The donee in tail, the grantee for life, and the lessee for years, take by *the act of the party*, and do not become tenants to the lord; and, consequently, as we have seen, no heriot [137] is, in such case, due on their death. The husband taking his curtesy, or the widow her dower, are in by the *act of the law*. The husband (at least in cases where he takes the *whole* estate) is tenant to the lord (*n*). The widow (except she *does* take the whole (*o*)), is tenant to the heir (*p*). It should seem, therefore, that, in the present case, the heriot would be due on the death of the former, though not of the latter. The distinction between the persons taking by act of law or of the party, does not seem to have been sufficiently attended to in the case in

(*n*) 2 *Inst.* 301. *Watk. on Desc.* 83.

(*o*) See *Watk. on Desc.* 81. & *Watk.* N. xxv. to *Gilb. Ten.* 373. & *Gilb. Ten.* 172-4.

(*p*) *Bro. Ten.* 84. & *Watk. on Desc.* 83.

[138]

Keilwey (*q*). Mr. *Viner* has told us (*r*), that according to *Frowike* in the case in *Keilwey*, the heriot was not payable on the death of a tenant by the curtesy. But Mr. *Viner* has not told us that *Kingsmil* was of a contrary opinion (*s*); nor has he told us that *Frowike* was answered in a manner to which he could not satisfactorily reply. For the instance which *Frowike* gave of the tenant for life and remainder-man differed materially from the principal case; in that the tenant for life and remainder-man were in by the act of the party, and the tenant by the curtesy was in by the act of law. Besides, the estate for life and remainder in fee, formed, in consideration of law, but one estate; while the estate of the tenant by the curtesy could not possibly form one with the reversion in the heir.

Heriot, what.

We have already seen that the heriot of the military tenant originally consisted of arms, horses, or habiliments of war; and that of the villein, ceorl, or husbandman,

(*q*) *Keilw.* 84. a. & b.

(*r*) 14 *Abr.* 296. Heriot. (B.) pl. 1.

(*s*) See *Keilw.* 84. a.

either of some beast used for the purposes of agriculture, or which formed part of his stock, or of some inanimate good: and as the latter (or villein heriot) is the only species of heriot now remaining among us (*t*), [139] we will here chiefly confine our remarks to it.

The most usual thing rendered as an Best animal. heriot of the latter kind is that of the best animal of which the tenant died possessed. And in an avowry it is necessary to allege of what nature the heriot be, whether an animal or dead good (*u*).

Which is the best animal, in case the

(*t*) The military heriot must have fallen with the military tenures. See 12 *Car.* 2. c. 24. Though, indeed, it seems to have been long before lost in the relief.

(*u*) See *Hutt.* 4. *Shaw v. Taylor.* *Hob.* 176. S. C. "Best animal." Manor of Basset fee in Sussex. The homage present that — died seised, &c. Whereupon there happened to the lord for an heriot the best animal, viz. *una galina* of the value of ten-pence, seized into the lord's hands. *Presentment* in 1627. "Best good," — without saying live or dead. 3 *East*, 260; and see 1 *Bosanq. & Pull.* 393-4. *Parkin v. Ratcliffe*, and *Adderley v. Hart*, cited in note (*u*), 394.

tenant dies possessed of several, is to be ascertained by the lord, for he may take which he pleases as such : but if he seize the one which in reality is the worst, he must be content ; for it will be his own folly to make such a choice ; and immediately on his election the property shall vest in him (*x*).

[140]

But, whatever the best beast may be, it must be remembered that it is the best beast of *his tenant* which the lord is entitled to ; for he cannot seize, or prescribe to have, the best beast of *a stranger* (*y*).

(*x*) *Hil.* 16 *Hen.* 7. pl. 3. fol. 4-5. *Hob.* 60. & *Bro. Har.* pl. 11. *Cro. Eliz.* 589. *Odiham v. Smith.* But it was resolved in the latter case, that if the tenant hold by rendering an ox as an heriot, and the tenant have several oxen, the lord cannot take which he pleases ; but the election is in the tenant, who may render which ox he will ; for if the tenant do render an ox (whether it be the best or the worst), the render will be satisfied. & see *Plowd.* 96.

(*y*) *Dyer*, 199. b. *Parton v. Mason & Marg.* (58). *Cro. Eliz.* 725. *Parker v. Combleford.* *Moore*, 16. *Wilson v. Wise.*

And as it must be the best beast of the *tenant*, so it must be the best beast of the *tenant at the time of his death or alienation*. For if the property in the beast was not *at that time* in the tenant, the lord can have no title to it (*z*). But if the property in such beast *was* in the tenant at that time, the title of the lord is complete. And, therefore, if the tenant die on the first of January, and the lord do not seize till the first of December, the lord must not take that beast which may be the best on the latter day, but that which was the best on the day on which the tenant died or aliened (*a*).

[141]

If the tenant, at the time of death or alienation, have *no* beast, the lord must of necessity lose his heriot; for where there is nothing, nothing can be had (*b*). If the tenant,

(*z*) *Bro. Har.* 8. *Kitch.* 135. b. 136. a. *Hutt.* 4-5. *Shaw v. Taylor.*

(*a*) *Mich.* 6 *Ed.* 3. pl. 3. fol. 36. a. *Plowd. Quarries.* Qu. 64.

(*b*) *Keilw.* 84. b. *Hutt.* 4. *Shaw v. Taylor.* *Carter,* 86. 4 *Leon.* 239. pl. 377. 2 *Bl. Comm.* 434. ch. 28.

therefore, parted with his property in his beasts, before his death or alienation, he would have prevented the lord's claim. This was frequently done in order to defraud the lords of their rights, till the statute of *Elizabeth* was enacted to remedy the evil—of which statute we shall presently say more (c). But the tenant cannot defeat the lord of his claim *by will*, as the devise will not take effect *till* his decease, and *then* the lord's title shall be preferred (d). The heriot, therefore, can only be taken from *the chattels of the tenant*; and is no charge on the lands (e), any more than a relief (f), or the fine of a copyholder (g).

Dead good.

When the heriot is of the best dead or inanimate good, a jewel or piece of plate

(c) *Post.* at the close of this chapter.

(d) *Plowd. Quæries. Qu. 64. Cò. Litt. 185. b.*

(e) *Bract. lib. 2. cap. 36. s. 9. fol. 86. a. Fleta, lib. 3. cap. 18. fol. 212. Britt. cap. 69. Fitz. Avowrie, pl. 233. 2 Bl. Comm. 424. Co. Copyh. s. 24. Tr. 24. But see Hil. 8 Hen. 7. 10. b. 11. a. pl. 3. contra as to heriot-service ; & post.*

(f) *Fitzh. Avowrie, pl. 233.*

(g) *Ante, vol. i. p. [321].*

may be taken (*h*). But it must, however, be always a *personal* chattel (*i*) ; it cannot be a *real* chattel, or a thing in action. And as the law, as already noticed, relative to an animate or living good, is equally applicable to the dead, it will be unnecessary to repeat it here.

In some manors it is customary to pay a sum certain in lieu of heriot (*k*). But such custom, like all other customs, must be beyond time of memory ; for if the lord and tenants enter at this day into a new composition, it will not bind the representatives of either party (*l*).

[143]

Sum certain
in lieu of
heriot.

However, on a grant or lease made at this day, a sum certain may be reserved in the name of an heriot (*m*) ; for this would have no relation to any *former custom*, but be a *new render on an express reservation in the deed*.

(*h*) 2 *Bl. Comm.* 424.

(*i*) *Ibid.* 424.

(*k*) *Kitch.* 103. a.

(*l*) 2 *Bl. Comm.* 424. *Co. Copyh.* s. 31. *Tr.* 46.
But *quære*.

(*m*) 2 *Saund.* 165. *Lanyon v. Carne & al. Ex. Cara.*
2 *Keb.* 505. pl. 75. 677. pl. 59. S. C. 1 *Lev.* 294. S. C.
1 *Vent.* 91. S. C.

Sum certain,
or best good
or beast.

[144]

It sometimes happens that the lord is to have an heriot of the best beast or good, or a sum certain. It is then in the election of the lord *which* of them he will have ; and it has been thought that the lord could not distrain for the former till he had expressly made his election (*n*) : but it should seem that by the very act of distraining his election would be made.

Sum certain,
if no beast.

In some manors the lord is to have the best beast, if the tenant die possessed of a beast ; but if the tenant have *no* beast at his death, then the best dead good (*o*) ; or a sum certain, as five shillings (*p*).

Heriot—due
on whose
death.

[145]

As the reservation of an heriot, *on a particular grant or lease*, is merely the agreement of the contracting parties, it most

(*n*) *Litt. Rep.* 33. 35. *Beare & Hodges.*

(*o*) " If the tenant that deceseth dyeth having no cattle of his owne, then to pay his best ymplement of household-stuff for the heriott." *Customs of the manor of Dymock* ; *Co. Glo.* vid. *Append.* N^o I. Or, best good. *Manors of Berkeley and Thornbury* ; in *Co. Glo. &c.* vid. *Append.* N^{os} IV. & VII. And see *Mich.* 7 *Ed.* 4. fol. 18. b. pl. 16. and *Cowp.* 62. *Griffin v. Blandford.*

(*p*) "*Burgensis cu. caballo. seruien. cu. moriebat.*

certainly may be reserved on any particular event. But when an heriot is claimed by custom, it can only be so on the death or alienation (q) of a tenant. To claim an heriot by custom, on the death of every person dying within the manor, or on that of a stranger, would not be good (r).

Tenant.

Stranger.

habeb. rex equum & arma ejus. De eo qui equu. n. habeb. si moreret. habeb. rex aut. X. Solid. aut terra. ejus cu. domib. Siq. morte præuent. non diuisisset quæ sua era. rex habeb. omem. ej. pecuniam." Doomsd. Herefordscire. tit. Hereford Civitate.

By the 24th law of William the Conqueror, the vavaser, in case he had no horse or arms, was to pay one hundred shillings. "*Sil fust des Apeille, quil ne' out ne chival ne las armes per c. solz."* LL. Gul. ap. Seld. ad Eadm. Kolh. & Wilk.

(q) See 2 Roll. Abr. 518. Tenure (H.) pl. 8. Custom of Cornwall for purchaser to pay relief; & see I. pl. 5. Bosanquet & Puller, C. P. 282. Trin. 38 Geo. 3. Parkin v. Ratcliff, where a custom was alleged to have an heriot on the in-coming of a purchaser. This, if supportable*, may bear some analogy to the fine on alienation, which became payable by the feoffee. See Watt. N. xxxii. to Gilb. Ten. 377.

(r) Cro. Eliz. 725. Parker v. Combleford.

* For the heriot was given to the lord when the person who had it could no longer use it; but here it seems to be taken away from the person who ought to have it, for the purpose of defence or agriculture. C. W.

Tenant in
fee, for life,
for years,
at will.

But, on the death of a *tenant*, an heriot (either by custom or service) may be claimed, whether such tenant be a tenant in fee (*s*), for life (*t*), for years (*u*), or at will (*x*).

[146]

Mesne.

It is not, however, necessary that such tenant be *the tenant paravail*; for a person having the *mesnalty* may equally hold by heriot (*y*). For the *lord mesne* is tenant to the lord above, though he be lord to the *tenant paravail*.

Disseisee.

If *A.* disseise *B.* yet *B.* will continue tenant to the lord by right *; and, therefore, an heriot will be due on the death of the disseisee, and not on that of the disseisor (*z*). But, according to the distinc-

(*s*) *Bro. Har.* 5. See *Gilb. on Distresses*, 8-10.

(*t*) *Bro. Har.* 5. *Kitch.* 133. a. 2 *Saund.* 165. *Lanyon & Carne, &c.* 3 *Salk.* 181. *Osborne v. Sture.*

(*u*) *Kitch.* 133. a. 2 *Saund.* 165. *Lanyon v. Carne.*

(*x*) 2 *Bulst.* 196. in *Hix v. Gardiner.*

(*y*) *Pasch.* 44 *Ed.* 3. pl. 24. fol. 13. a. & cited *Bro. Har.* 1.

* So of *Copyh.* see *Co. Copyh.* s. 56. *Tr.* 129.

(*z*) *Vide Pasch.* 44 *Ed.* 3. pl. 24. fol. 13. a. 2 *Roll. Abr. Her.* 2. *Kitch.* 134. a.

Unless the custom require a dying seised. See

tion noticed by *Littleton, J.* in the *Year-book* of 32 *Hen. VI.* (a), as the lord would be obliged to take the disseisor for his tenant, after the entry of the disseisee or his heir be tolled, it should seem that, after [147] the tolling of such entry, the heriot would be due on the death of the disseisor or *his* heir; and not on the death of the disseisee or *his* heir.

A copyholder, indeed, cannot, properly, be disseised (b); and, therefore, this doctrine may not be considered as strictly applicable to a person holding by copy (c). Yet it will at least be serviceable by way of analogy in illustrating a point which frequently occurs.

Thus if a copyholder surrender to the Surrenderor of a copyhold,

2 *Lord Raym.* 994. *Smartle v. Penhallow.* 1 *Salk.* 188. S. C. But in that case a seisin *in law* will be sufficient. See *Co. Litt.* 239. b. & *Watk. N.* xxiii. & xxiv. to *Gilb. Ten.* 372-3.

(a) *Hil.* 32 *Hen.* 6. pl. 16. fol. 27. & *Watk. N.* xxiv. to *Gilb. Ten.* 372.

(b) *Ante*, vol. i. p. [61].

(c) But see 2 *Roll. Abr. Her.* 2. & *Co. Copyh.* s. 56. *Tr.* 129. & *March*, 23. *Norris v. Norris.*

use of another, and then die, before the surrenderee be admitted; such copyholder or surrenderor will die *tenant to the lord* (*d*); and, consequently, an heriot will be due on *his* death (*e*), and not on the death of the surrenderee.

Joint-tenants.

[148] If there are several joint-tenants, an heriot shall not be due until the death of the longest liver of them. For joint-tenants are seised *per mie et per tout*; and, however many persons there are, they all make but *one tenant* to the lord. The tenancy, therefore, is not at an end by the death of one of them; and, consequently, by the death of that one no heriot can be due: the tenancy remains filled by the survivor; and

(*d*) *Ante*, vol. i. p. [60]. [94]. [101].

(*e*) *Kitch.* 135. a. But qu. if the heir of the surrenderee be afterwards admitted, and the admittance have relation to the surrender, so that the surrenderee be considered as having died seised, so as to give the widow her freebench, will the heriot be due on the death of the surrenderee? See 5 *Burr.* 2765, &c. If so the lord must return the heriot taken on the death of the surrenderor. C. W.

the lord cannot claim the heriot till the tenancy be changed (*f*).

The heriot is due only on the death of a *Sole tenant.* person dying *solely seised* (*g*): hence it should seem that it would not be due on the death of a parcener (*h*); for parceners, like *Parceners.* joint-tenants, compose but *one tenant* to the lord (*i*). If lands, therefore, descend to [149] two daughters, (and if, in the case of a copyhold, they be admitted *as parceners*, for if they be admitted *severally*, it would be wholly different,) and one die, the heriot would not, I conceive, be due till the *death* of the survivor, as the other was not *solely seised*.

(*f*) *Mich.* 24 *Ed.* 3. pl. 88. fol. 72. b. *Bro. Hariot.* 4. *Fitzh. Har.* 3. & 5. *Præscript.* 29. *Kitch.* 134. a. & b. *Owen*, 152. *Butler v. Archer*.

(*g*) *Vide Mich.* 24 *Ed.* 3. pl. 88. fol. 72. b. *Trin.* 25 *Ed.* 3. pl. 3. fol. 86. a. & *Kitch.* 134. b.

(*h*) See 3 *Leon.* 13. ca. 30.

(*i*) See 3 *Leon.* 13. ca. 30. & *ante*, vol. i. [277-8]. 2 *Pr. Wms.* 614. *Eastwood v. Vinke*; & *Co. Litt.* 163. b.

And they are seised *per mie & per tout*, as joint-tenants are. *Vide Liber. Assisarum*, 210. b. *Pasch.* 34 *Ed.* 3. pl. 15.

Tenants in
common.

But tenants in common have *several* estates : each is *solely seised of his portion* ; and, consequently, an heriot must be due on the death of each (*k*).

Reversioner.

An heriot is due on the death of a reversioner equally as on that of a person in possession (*l*), for he is equally in the seisin of the fee (*m*) ; and a reversion is a tenement as much as a particular estate (*n*).

Particular
tenant and
remainder-
men.

[150]

If a person seised in fee of *freehold lands* grant to *A.* for life, with remainder to *B.* for life, with remainder to *C.* for life, with remainder to *D.* in fee ; *A.*, *B.*, *C.*, and *D.* shall *hold of the lord*, as the whole fee is disposed of (*o*) : but as the particular interest granted

(*k*) See *ante*, vol. i. p. [280].

(*l*) *Pasch.* 44 *Ed.* 3. *fol.* 13. a. pl. 24. *Bro. Avowrie*, 142. *Owen*, 152. *Butler v. Archer*.

(*m*) *Ante*, vol. i. p. [58].

(*n*) *Bro. Escheat*, 6. *Waste*, 40. *Dyer*, 137. b. pl. 26. *Gilb. Ten.* 88. Feoffment to *A.* in fee on condition that he re-demise to the feoffor for 40 years, if he so long live. If *A.* had died before the feoffor, a heriot would have been due on his death. 10 *Co.* 57. a.

(*o*) See *ante*, p. [136].

to *A.* and the several remainders limited to *B.*, *C.*, and *D.*, form together *but one estate (p)*, it should seem to follow that *A.*, *B.*, *C.*, and *D.*, form *but one tenant to the lord*; and, consequently, that *but one heriot can be due*; and that on the death of the survivor of them (*q*). But if either alien his portion, it should seem also that an heriot would be due on the alienation of each; *as the respective alienors would cease to be tenants by their own act*; and the respective alienees would be in of a new estate.

If two leases be made of the same lands, the second to commence on the determination of the first, and the lessee of the second die during the continuance of the first lease, it seems that an heriot will *not* be due on his death; as he had only an *interesse termini (r)*.

Person having
an *interesse
termini*.

[151]

So an heriot is not due on the death of a

(*p*) *Co. Litt.* 143. a.

(*q*) See *Keilw.* 83. b. 84. a. pl. 7. & 8. & *quære de hoc*.

(*r*) 2 *Keb.* 505. 677. *Lemal v. Cara.* 2 *Saund.* 165. S. C. 1 *Vent.* 91. S. C.

cestuy que trust; for it is not the *cestuy que trust* but the trustee that is the tenant to the lord: on the death of *the trustee*, therefore, and not on that of the *cestuy que trust*, shall the heriot accrue (*s*).

Feme covert.

On the death of a feme covert the lord can have no heriot; as she can (as such) have no personal chattels (*t*).

Husband.

If a female tenant marry, and the husband die in her life-time, no heriot can be due on *his* death; for the feme will continue tenant (*u*).

[152]

It is not the husband alone who, on marriage, is seised in the right of the wife, though so said in common language; but the husband *and* wife are seised *in her*

(*s*) 1 *Vern.* 441. *Trinity College, Cambridge, v. Browne*; & see 3 *Atk.* 77. in *Car v. Ellison*.

(*t*) *Keilw.* 84. a & b. 4 *Leon.* 239. *Ca.* 377. & 2 *Bl. Comm.* 424. where the same books are cited.

But this reasoning will not hold in cases where she has a separate estate.

(*u*) *Plowd. Quæries. Qu.* 64.

right (x). They are seised *by entireties*; and, consequently, on the husband's death, the seisin *remains in the wife (y)*. The estate was in *her*, even during the coverture (*z*). There is *no change of the tenancy on his death*.

But if the wife die in the life-time of the husband, and the husband be entitled to his curtesy, an heriot would be due on his death; as *he would then die tenant to the lord (a)*. Tenant by the curtesy.

When the widow takes her dower *of freehold lands* at common law, she becomes *tenant to the heir*, and not to the lord (*b*); and, consequently, an heriot cannot be due to the lord on *her* death. The heir Dowress.

[153]

(*x*) *Dougl.* 329. *Polyblank v. Hawkins.* *Plowd.* 191. a.

(*y*) See *Co. Litt.* 185. b. *Plowd.* 418. b.

(*z*) *Co. Litt.* 351. a. 2 *Inst.* 301.

(*a*) See *ante*, p. [137].

(*b*) *Ante*, p. [137]. Unless there be no heir; and in that case the widow shall hold of the lord. See *Watk. on Desc.* 83. N. (*n*);—and it should seem that an heriot would *then* be due.

continues tenant to the lord for the whole of the premises ; and the widow shall be attendant on such heir for the third of the services (c).

(Freebench.) But where the widow takes *the whole*, at least, *of a copyhold* as her freebench, *she* becomes *tenant to the lord* (d) : and it should seem that she equally becomes *tenant to the lord* if she takes *a portion only* of the lands ; as a moiety or third (e). For there is a difference, with respect to the creation of a tenure, between a freehold and copyhold interest : if a freeholder, seised in fee-simple, grant to another for life or years, the grantee shall hold of the grantor ; but if a copyholder, seised in fee-simple, create a par-

[154]

(c) *Watk. on Desc.* 83. & notes.

(d) See *Gilb. Ten.* 172-3. *Watk. Ed.*

(e) See *Gilb. Ten. ubi sup.* & 2 *Show* 184. *Chapman v. Sharpe*.

Whatever portion she takes, it is called her *freebench*, which implies that she becomes a *bencher*. Now if she has a right to sit as a *bencher*, or on the homage, she must be *tenant to the lord* ; for none but *tenants to the lord* have a right to sit in such capacity in the lord's court. See *ante*, p. [69].

ticular interest, as for life or years, the latter shall hold of the lord, and not of the copyholder(*f*). And I believe there is no instance in which the copyholder can create an interest, by right, to be held of himself, except by a lease for years by custom or license; and then the interest created by such lease would be *a common-law*, and not *a copyhold-interest* (*g*); and *the copyholder* would continue *tenant to the lord*.

Now a widow taking a portion of the copyhold as her freebench, or an husband taking a portion as his curtesy, would not take a common-law, but *a copyhold interest*; and, by consequence, must hold that interest by *copy of court-roll*; and by consequence *of the manor*, or of the *lord, as lord*; and, by consequence, must *be tenant to the lord*; and, by consequence, an heriot must be due on *her or his* death.

(*f*) *Cro. Car.* 44. *Gilb. Ten. ubi sup. & ante*, vol. i. [155].

(*g*) *Ante*, vol. i. p. [301-2].

[155]
Corporation.

Though a corporation is immortal and cannot die, yet it is said(*h*) that, by special custom, an heriot may be due on the death or avoidance of its head.

Several
tenements.

Before we dismiss this subject we must remark, that if a person has several tenements held of the same manor, which are heriotable, he must pay an heriot for each (*i*).

Heriot on
alienation.

An heriot may not only be due on the death of the tenant, but also on the alienation of the tenancy. Though it does not follow, of necessity, that because it is due

(*h*) *Long Quinto. Mich. 5 Ed. 4. fol. 72. b.—*
Vide Fitzh. Hariot. 7. & vide Trin. 1 Ed. 2. 14. a.

(*i*) *Kitch. 134. a. & vide ante, vol. i. p. [303]. [316].*
6 Co. 1. Bruerton's case.

Unless there be a custom to the contrary. Thus in the manors of *Mayfield & Framfield*, in *Sussex*, but one heriot is due by custom, though the tenant die seised of several tenements. Such a custom is said to have been disallowed in Chancery, 12th June 1615, 13 *James. Decree, Lord Gerrard complainant, and Abnett & others defendants* as to the manor of *Audley. Quære* the register's book. See *Godb. 265. Lord Gerrard's case.*

in the first instance, it is therefore due in the latter : a special custom, or an express or presumed reservation, must be proved, [156] or the heriot on alienation cannot be claimed (*k*).

As the heriot on death can only be due on the death of a tenant, so an heriot on alienation can only accrue on the actual change, or, more properly, the actual relinquishment or cession of *the tenancy*. If the tenancy be not changed or relinquished, the heriot cannot be due. Cession of the tenancy.

And here the difference before noticed (*l*), with respect to the creation of a tenure in the cases of freehold and copyhold property, must be attended to. The donee or grantee of a particular interest shall, in the case of a *freehold*, hold of the donor or grantor, and not of the lord. The tenancy, with respect to the lord and donor, is not changed; is

(*k*) *Kitch.* 133. a. & b. 134. b. 135. b. See *ante*, p. [145]. of an heriot being claimed on the *in-coming* of a tenant.

(*l*) See *ante*, p. [136]. [153-4].

[157]

Particular
interest of
freehold;

not relinquished, or in any wise affected; *the donor is still tenant to the lord, and answerable for the services of the whole fee.* It should seem, therefore, that such heriot cannot be due on the gift or grant of a particular interest of the freeholder, but only on his *alienation in fee-simple*; which, in truth, can now be the only strict and proper *alienation*; as, in that case alone, *the tenancy* would be altered or relinquished (*m*).

of copyhold.

With respect to *the copyholder*, it is wholly different. *He* cannot (unless, indeed, in the anomalous and monstrous case of a *manor* held by copy) (*n*), give or grant any portion of his estate *to be held of himself*; except, as before observed, a common law interest for years by license, which can have no relation to our present inquiries. He can only transfer such portion by surrendering it into the lord's hands; and the person taking that portion becomes immedi-

(*m*) See *Gilb. Ten.* 66. & *Watk.* n. xxxvii. p. 391. & n. liv. p. 400.

(*n*) *Ante*, vol. i. ch. 2. p. [32].

ately, on his admission, (and *till admission*, he does not properly take it) (o), *a tenant of the lord*. Though the original copyholder, therefore, continues tenant to the lord *as to his reversion*, he has absolutely relinquished his tenancy *as to the particular portion*; he is no longer tenant of *that*. He is not, like the freeholder, answerable for the *particular services*. A *new* tenancy is created: the portion surrendered is no longer a portion of the *original tenancy*, as in the case of a grant for life of freehold lands. It should therefore seem, that an heriot would be due (where an heriot on alienation is due by custom) *on the surrender of a particular copyhold interest*, however small. [158]

And it should seem, also, that though a *Reversion*. new tenancy be created as to the particular portion, yet, as the original copyholder would continue tenant as to his reversion (p), an heriot would be equally due on the alienation of such reversion as on

(o) *Ante*, vol. i. p. [86]. [100].

(p) *Ante*, [149]. & *Owen*, 152. *Butler v. Archer*.

that of an estate in possession. But there is a remarkable paucity of cases on this subject in our books.

[159]

Alienation
of part of
the lands.

Having spoken of an alienation of part of the *estate* or *interest*, we must next consider the consequence, as to this point, of an alienation of part of the *lands*.

Multiplication
of heriot by
alienation of
part.

And it appears to be on all hands agreed, that on the alienation of part of the lands the heriot shall be multiplied. For if *A.* be seised of forty acres of land, and he alien ten acres to *B.* and ten acres to *C.* and ten acres to *D.* and retain the other ten himself, the lord shall have four heriots, *i. e.* one on the alienation to *B.* one on that to *C.* a third on that to *D.* and a fourth on *A.*'s alienation of the remaining ten acres (*q*). For, though *A.* continues tenant to the lord as to the remaining ten acres, he has ceased to be tenant of those

(*q*) *Fitzh. Hariott pl. 1. Kitch. 134. a. 135. b. 6 Co. 1. Bruerton's case. 8 Co. 104. b. Talbot's case. 2 Brownl. 293. Chapman v. Pendleton; & see 2 Roll. Abr. 514. Ten. (Services, C. pl. 1).*

he has aliened ; in the same manner as the copyholder ceases to be tenant as to that portion of the estate which he surrenders to the use of another.

[160]

And even if *A.* afterwards re-purchase the lands from *B.*, *C.*, and *D.*, the four heriots will continue to be payable (*r*). Though the original tenant re-purchase.

If the lord purchase part of the lands, it will extinguish the *heriot-service* as to the whole ; but an *heriot-custom* will be due on the death or alienation of the tenant as to the remaining part ; for he will still continue a tenant as to that part to the lord (*s*). Extinction by purchase of the lord.

If the lands escheat, or in any other way return to the lord, it seems agreed that *heriot-service* shall be absolutely extinct (*t*). On escheat, &c.

(*r*) *Fitzh. Hariott* pl. 1. 8 Co. 105. a.

(*s*) 8 Co. 106. a. & b. *Talbot's case*. Co. Litt. 149. b. 2 *Brownl.* 293. *Chapman v. Pendleton*. *Gilb. Rents*, 171-2.

(*t*) *Vide Mich.* 14 Hen. 4. fol. 5. a. & b. *Kitch.* 134. b. 8 Co. 106. *Talbot's case*. 2 *Brownl.* 296. *Chapman v. Pendleton*.

[161] And, by the by, it would be odd enough to think that it should not. For how shall the services continue longer than the tenancy for which they were to be rendered? If there be a new grant there must be a new reservation.

But it should seem to be the better opinion that heriot-*custom* would not be extinct on an unity of possession : so that if the lord, after such escheat, &c. re-grant the lands, they would still be subject to an heriot-custom (*u*). Though it should not be forgotten, that, if the lands be *freehold* lands, and the lord re-grant them *in fee*, no heriot can possibly be claimed *by him* afterwards : for by the re-grant in fee the lands would be immediately separated from, and no longer held of, that manor by the custom of which the heriot is claimed, as they would be held of the lord above (*w*).

(*u*) *Kitch.* 134. b. *Talbot's case*, & *Chapman v. Pendleton*, *ubi sup.*—*Vide Hil.* 8 *Hen.* 7. *pl.* 3. fol. 10. b. 11. a.

(*w*) See *ante*, vol. i. p. [367-8], and the books there referred to ; and *Litt.* s. 215.

But if the lands *be copyhold* and re-granted, though in fee, it should seem that, immediately on such re-grant, they would become subject to the custom. For what reason can [162] be given, why the custom as to heriots should in such case be gone, any more than the custom as to fines, &c. which would undoubtedly continue ? (*x*).

If the best beast or good be due to the lord on the death or alienation of his tenant, the property in it becomes vested in the lord immediately on such death or alienation, whether the heriot be an heriot-custom or an heriot-service (*y*). And, consequently, he may seize it wherever it may be found, or bring trover (*z*) or detinue (*a*) against the person esloigning or detaining

The property in an heriot becomes immediately vested in the lord :

Who may bring *trover*, &c. for it.

(*x*) See *ante*, vol. i. ch. 2.

(*y*) *Vide Bro. Hariott* pl. 2. *Plowd.* 96. & *post*.

(*z*) 1 *Show.* 81. *Parker v. Gage*; & see *Cro. Car.* 260. *Major v. Brandwood*.

Trover lies for an estray before actual seizure, *per Keeling*, C. J. 2 *Keb.* 589. *Wilbraham v. Snow*; & see *F. N. B.* 91. B. & note (a). & D. also 22 *Viner*, 542. pl. 15 & 16. *Wreck. Bull. N. P.* 33.

(a) *Bro. Har.* pl. 9. *Kitch.* 133. b. 135. b. *Co. Copyh.* B. 31. *Tr.* 44.

it ; and, if it be reserved on a grant or lease, he may have an action of debt or covenant (*b*).

[163]
Seizure.

It appears to be now settled that the lord may seize for heriot-service as well as for heriot-custom (*c*) ; though contrary to the distinction in the ancient books.

And, as the property in the best beast or good becomes vested in the lord on the death or alienation of the tenant, he may seize it wherever it may be found, as well without his seigniorship as within ; and that whether the heriot be due by custom or as a service (*d*).

(*b*) 2 *Saund.* 167. *Lanyon v. Carne.*

The lord may bring his bill in equity for a discovery of the best beast, &c. 1 *Vern.* 441. *Trinity College, Cambridge, v. Browne.*

(*c*) *Plow.* 94. *Woodland v. Mantel & al.* & the books cited in note (*g*) p. 97, of the English edition. *Co. Copyh.* S. 31. *Tr.* 44.—*Gilb. Distresses*, 10-11. 3 *Bl. Com.* 15.

(*d*) *Keilw.* 84. b. *Plowd.* 96. *Fitzh. Har.* 4-5. 1 *Salk.* 356. *Austin v. Bennet.* 1 *Show.* 81. *Parker v. Gage.*

But in the case of *Parker v. Gage* (e), it is said to have been held by *Holt*, C. J. that an heriot (which is there called a *suit-heriot*) reserved *by deed*, and not due by reason of *ancient tenure*, cannot be taken off the manor. Yet I must confess, that I [164] cannot see the propriety of such distinction; nor the reason for a distinction between a *suit-heriot* and an *heriot-service*. By saying that such *suit-heriot* cannot be taken off the manor, it seems to imply, at least, that it might be taken *within* the manor. Now, if the lord would be justified in seizing it within the manor, the property must have been vested in him; for otherwise he could not be warranted in seizing it at all. A person cannot be warranted in seizing the chattel of another. Nay, if he do seize the chattel of another, he would be subject to an action of trespass (f). He can only seize his own chattel: but his own chattel, however he became entitled to the property in it, he most

(e) 1 *Show.* 81. ca. 86.

(f) *Post*, p. [167].

certainly may seize, wherever it may chance to be.

[165] However, a person must seize his chattel in a peaceable manner ; he must not do so with force of arms. He cannot be justified in breaking open a private stable, *a fortiori* a dwelling house, nor even in entering on the premises of a third person, unless the chattel be feloniously taken (*g*) ; but he must have recourse to an action at law (*h*).

While the property, therefore, continues in the lord, he may peaceably seize ; but his right to seize must necessarily be at an end on the transfer of that property to another. If an horse or ox fall to the lord as an heriot, and the executor of the deceased tenant, or any other person, take and sell it in *market overt*, the lord cannot afterwards be warranted in seizing it, as the property would be changed by such sale (*i*). But,

(*g*) 2 Roll. Rep. 55. *Higgins v. Andrews*.

(*h*) See 3 Bl. Comm. 4-5.

(*i*) *Fitzh. Har.* pl. 2.

with respect to the former animal, the requisites prescribed by the statutes of *Philip & Mary* and *Elizabeth* must be complied with, or the property will not be out of the lord (*k*). Stolen horses only.

The lord may seize by his bailiff or other officer of the manor (*l*); and it has been said, that even a stranger may seize to the use of the lord (*m*). [166]
Hutt. 4.

But the lord can only seize the beast or good which was his tenant's at the time of the tenant's death or alienation; and therefore, it will be a good plea in avowry to say, that the property in it was not in the tenant at the time of that event (*n*).

(*k*) 2 *Inst.* 713. *Burn's Just. tit. Horses, sect. 2.*
2 *Bl. Comm.* 450. ch. xxx.

(*l*) *Fitzh. Har.* 5. *Termes de la Ley, tit. Hariot.*

(*m*) *Per Keble; Pasch. 2 Hen. VII. pl. 1. fol. 15. b.*

(*n*) *Kitch.* 135. b. 136. a. *A.* died possessed of several horses, the lord claimed five of those horses as heriots, and the bailiff marked them. *B.* the son of *A.* alleged that he and his father had carried on the business on the farms jointly for some time, and that the horses, &c. survived to him. The question was: if the lord had a remedy? The case came before

So the lord cannot seize the beast of a *stranger*; even if he allege a special custom

a gentleman of the profession who consulted me on it; and we conceived, that the lord had no remedy, either at law or in equity.

If the horses did actually survive, the question was at an end; as the beasts were become the beasts of the survivor, and not of the executors of the deceased; as the survivorship should have the preference to the lord's claim. But supposing they did *not* survive by the *law of merchants* *, or (which would do away the doubt in this respect) that *A.* and *B.* had been tenants in common, we thought that the lord had no remedy. For the heriot was due only by custom, and the lord must take the custom as he found it. The custom was, that the lord should have the best beast of which the tenant died possessed. Now the tenant in the present case, died possessed only of half a beast, and, consequently, had no beast for the lord to claim. There was no custom for the lord to have *half* a beast. The custom was for him to have a whole beast, and if he could not have a whole beast, the custom could not be answered.

Even in the case of a *render*, (which would certainly be more favoured than such a payment as an heriot) the law would not suffer a beast to be divided. It was either multiplied or lost. See 6 Co. 1. *Bruerton's case*. 8 Co. 105. *Talbot's case*.

* See 1 Vern. 217. *Jeffereys v. Small*.

to seize such beast being *levant et couchant* on the lands, in case of the deceased tenant's beast being esloigned (*o*). But if the lord finds a beast upon the lands of which his tenant died possessed, and seizes it, the person replevyng it must show that it was not the tenant's beast (*p*).

If the lord seize a beast as an heriot where [167] no heriot is due, the owner may replevy, or have an action of trover or trespass against him (*q*).

But if the tenant had no beast, and the lord enter to seize for an heriot, conceiving that the tenant had beasts at his death, and the executor of the deceased tenant deliver his own beast to the lord, it shall be considered as a gift; and the executor,

(*o*) *Dyer*, 199. b. *Parton v. Mason*. *Moore*, 16. *Wilson v. Wise*. Though some of the old books are otherwise, even as to an heriot-custom. *Vide 27 Ass. pl. 24.*

(*p*) 1 *Mod.* 63. *Jordan v. Martin*, per *Twisden*.

(*q*) *Cro. Jac.* 50. *Bishop & al. v. Viscountess Montague*.

it is said, shall not be permitted to say afterwards that it was not the beast of the deceased, and that, therefore, the lord had no right to it (*r*).

Distress.

[168]

It seems to be settled, that the lord cannot distrain for heriot-custom*, but that he may for heriot-service (*s*). And that for heriot-service he may distrain any goods he can find upon the lands charged with such service, whose-ever property they may be (*t*). But, according to the old law, it is said he could not distrain after the term on which the heriot was reserved ended; yet *quære* whether this be not helped by the statute of *Anne* (*u*); as an heriot-service

(*r*) *Mich.* 7 *Ed.* III. pl. 26. fol. 50-51.

* *Keilw.* 167. a.

(*s*) *Bro. Har.* 2, 6, 7, 9. *Kitch.* 133. b. & c. 3 *Bl. Comm.* 15. *Gilb. Distresses*, 10-11.

And an avowry for such distress is not within the statute 31 *Hen.* VIII. c. 2. an heriot being a casual service. 2 *Inst.* 96. 4 *Co.* 8. b.

(*t*) *Bro. Har.* 6. *Cro. Car.* 260. *Major v. Brandwood.* 1 *Salk.* 356. *Austin v. Bennet.* *Kitch.* 133. b. *Gilb. Distresses*, 10-11.

(*u*) 8 *Ann.* cap. 14. s. 6. & 7.

is as a rent (x); and a rent need not be annual (y).

It has been already remarked, that if the tenant has no beast, or other good, at the time of his death, &c. the lord must, of consequence, be deprived of his heriot: hence, in order to prevent the claim of the lord the tenant sometimes aliened his chattels before that event. But it is enacted by the statute 13 *Eliz. cap. 5.* that all gifts, grants, alienations, conveyances, &c. devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent, to delay, hinder, or defraud the lord of his heriot, shall, as against such lord, his heirs, executors, &c. be utterly void.

Alienation
to defraud
the lord.

[160]

(x) *Ante.* Of heriot-service.

(y) *Co. Litt.* 47. a. 1 *Vent.* 91. *Lion v. Carew.*

Note; a distress for heriot-service is within the statutes 7 *Hen. VIII.* cap. 4. 21 *Hen. VIII.* cap. 19. & 11 *Geo. II.* cap. 19. as to costs. See *Cro. Eliz.* 257. *Haselip v. Chaplen*; & *ibid.* 330. S. C. *Cro. Jac.* 28. in *Mackworth v. Shipward.* *Barnes C. P.* 148. *Lloyd v. Winton.*

But as, till the death or alienation of the tenant actually take place, the lord can have no title to any beast or good of the tenant as an heriot, but the property in the chattels of the tenant must remain in himself, such tenant has, undoubtedly, a right to dispose of them as he pleases; unless (as to the present case) it be apparent that he would dispose of them "to the end, purpose, and intent, to defraud the lord of such heriot." If such disposition be not to such end, purpose, and intent, and so found by the jury, it cannot be within this statute of *Elizabeth*. And, consequently, as fraud shall never be intended or presumed, such disposition must be proved to have been made to the end, and for the purpose, of defrauding the lord of his heriot; or the lord, or person alleging such fraud, cannot avail himself of the statute (z).

[170]

If a tenant hold several tenements of several lords, which are heriotable (*i. e.* for example, rendering *one* heriot to each of

(z) 2 *Brownl.* 187. *Tyrer v. Littleton*. 10 Co. 56. a. S. C. cited.

the respective lords), and he have twenty horses, and make a fraudulent gift of those twenty horses to another person, it is said that each of the lords may have a separate action, *qui tam*, on the statute of *Elizabeth*; but shall recover only the value of one beast; or, as *Dyer* expresses it, he shall "recover according to his grievance" (a). But the statute expressly says, that the offender shall forfeit the value of the whole of the chattels so fraudulently conveyed; half to the crown and half to the party or parties grieved. Now, if the action brought be a *qui tam* action, the whole penalty inflicted by the statute must surely [171] be recovered, or none at all. If one lord only bring his *qui tam*, and recover the value only of one horse, is the crown to be content with the half of the value of that one horse till another lord shall choose to bring another action? Is the person who fraudulently conveys to be harassed with twenty *qui tams*? This would be a punishment with a witness. But the forfeiture would be no punishment at all to the offender in such case; but to the lord, who

(a) *Dyer*, 351. b. *Creswell v. Cokes*. 2 Leon. 8. S. C.

has been already sufficiently aggrieved : since the lord had a right to the whole horse, and the tenant no right to the horse at all ; and, consequently, if the moiety of *that* horse was to be forfeited to the crown, it would be a confiscation of the property of the party injured rather than of the party offending. It should seem, therefore, that a distinction should be observed with respect to an action *qui tam*, and an action merely for the recovery of a particular heriot : thus, if the tenant make a fraudulent gift of his twenty horses, the lord may bring a *qui tam* against the *alienor*, (for he it is that is the aggressor,) and shall recover the moiety of the value of the twenty horses, according to the express provision of the act : but if each lord choose to bring his action of *trover*, *detinue*, or on the case, against the person, in whose possession the horses are, (for the statute declares the gift to be void, as against the party aggrieved ; and, by consequence, the property will be in the lord, as before noticed) (*b*) ; each lord shall recover the value of the horse he claims, or “ according to his grievance.”

(*b*) *Ante*, p. [162].

CHAP. VII.

OF SUIT.

THE obligation on the copyholder to do suit to the customary court of the manor has been already noticed (*a*). We will now, therefore, proceed to inquire who may be such a copyholder as is compellable to do suit?—the manner of performing it?—and the powers and remedies which the law has given to the lord to compel such performance, or to punish the default? [173]

And, in the first place, we must remark, that every person who holds *by copy*, however small the interest he claims, must hold *of the lord* (*b*). If a copyholder seised in fee, surrender to the use of *A. B.* for life,

Who shall do suit in the customary court, and who not. A person holding a particular interest *by copy*;

(*a*) *Ante*, ch. 1. Of Courts.

(*b*) See *ante*, ch. 3. Of Freebench; and ch. 6. Of Heriots.

[174] *A. B.* shall not hold of the surrenderor, as he should have done of his grantor had the estate been of freehold land, but he shall hold immediately of the lord : and, consequently, as he becomes tenant to the lord, he shall do suit at his lord's court : and so of a *copyholder* for years (c).

But not the
lessee of a
copyholder.

But if a person holding by copy, lease his copyhold at will, or for a year without license, or for a longer term, if the custom of the manor permit, or, if not, by license, the lessee shall not do suit ; for he takes a common-law, and not a copyhold, interest (d) : and, consequently, not being a customary tenant, he can owe no suit to the customary court.

Women.

Husband.

[175]

A woman copyholder shall do suit if she be sole (e), or a widow (f) ; but if she be under coverture, her husband shall perform

(c) See *ante*, vol. 1. p. [242-3].

(d) See *ante*, vol. 1. p. [242]. [301].

(e) *Ante*, vol. 1. p. [275]. N. (m),

(f) *Ante*, vol. 1. p. [274]. and vol. 2. p. [69], &c.

it for her (*g*). So the widow shall do suit for her freebench (*h*), and the husband for Curtesy. his curtesy (*i*).

But it should seem that an infant shall Infant. not do suit : for he cannot do it in person ; nor does it appear that he can perform it by his guardian (*k*). Yet *quære* whether he is not compellable to do it in person so soon as he is out of ward by the custom of the manor, though he should not be one-and-twenty years of age ; as an infant is certainly of years of discretion at fourteen, and permitted in the common-law courts to be sworn, on many occasions, at that age, and, consequently, indictable for perjury ; and it should, therefore, seem that he may forfeit his copyhold before twenty-one for default of suit * : for this differs from default of [176]

(*g*) *Ante*, vol. 1. p. [274].

And in ancient rolls the husband is frequently mentioned as sitting on the homage in right of his wife.

“ *Homagiu* :—Ric: Wood—in *Jure Uxor* : }
Stephus: Fox—in *Jure Uxor* : } *Jur.*”

(*h*) *Ante*, ch. 3. Of Freebench, p. [69].

(*i*) *Ante*, p. [69]. [71-2].

(*k*) *Ante*, ch. 4. Of Guardian, p. [106].

* *Ante*, vol. 1. p. [337-8].

admittance ; since, before the statute 9 *Geo.* the lord might, for default of admittance, have seized *quousque* (*l*), and so be at no loss ; but here the tenancy is full.

Heir, before
admittance.

An heir shall not be sworn upon the homage before admission ; for before admission he is not a tenant to the lord. However, if the lord or steward chose to swear him it should seem to imply an admission (*m*).

The king.

Though the king should be supposed capable of being a copyholder, yet he should not do suit ; as it would be inconsistent with the majesty of his character (*n*). But the king cannot be another man's villein.

A corporation.
Suit cannot
be done by
attorney.
[177]

So a corporation cannot do suit (*o*) ; as it must appear by attorney ; and an attorney shall not do suit in a customary court (*p*).

(*l*) 1 *Lev.* 63. *Earl of Salisbury's case* ; and *ante*, vol. 1. p. [234]. & vol. 2. p. [97].

(*m*) *Ante*, vol. 1. p. [246].

(*n*) *Ante*, vol. 1. p. [31].

(*o*) *Ante*, vol. 1. p. [31]. [242].

(*p*) *Ante*, ch. 4. Of Guardianship, p. [106].

But although suit shall not be done in a customary court by another, yet a copyholder may be *essoigned* by attorney (*q*).

If the copyholder do not appear on a *personal* summons, or be duly *essoigned*, he shall *forfeit* his copyhold (*r*). Suit compelled under forfeiture;

So the lord may *distrain* his copyholder for non-performance of suit (*s*). But such distress cannot be sold (*t*). By distress;

So the copyholder may be amerced for not performing his suit (*u*). But such amercia- By amercia-
ment.
[178]

(*q*) *Ante*, ch. 1. Of Courts, p. [33].

(*r*) *Ante*, vol. 1. p. [330]. Seisin of suit, what shall be. See 3 *Vin. Avowry*, (B) & (G).

(*s*) See *Gilb. Dis.* 5. *Co. Lit.* 150. b. 151. a. *Noy*, 135. *Rivet v. Dowe*. 1 *Roll. Abr.* 665. *Distress*, (E) pl. 1. Without prescribing to *distrain*. 2 *Lord Raymond*, 860. *Tonkin v. Croker*.

(*t*) 1 *Bulst.* 52. *Hewit v. Norberrow*.

But it cannot be excessive. See 3 *Bl. Comm.* 12. See the books referred to by *Blackstone*; and *quære* whether the distress for homage and fealty only cannot be excessive. See *Brook. Assize*, pl. 290.

(*u*) See *ante*, ch. 1. Of Courts, p. [29]. 1 *Leon.* 104. *Sir John Braunche's case*.

ment must be affeered by the other copyholders (*x*).

Dispensation
of the forfei-
ture.

Though if the lord distrain or amerce, it will be a dispensation of the forfeiture (*y*).

Monstraverunt.

But a *monstraverunt* will not lie for a copyholder who holds at the will of the lord in ancient demesne (*z*). And if a copyholder sue out a replevin against his lord, upon the lord's lawful distress for services, it will be a forfeiture *ipso facto* (*a*).

Replevin.

Compounding
suit.

It is said by *Kitchin* (*b*), that the copyholder may compound with his lord *pro secta relaxanda*.

Suit by tenants
in common,
coparceners,

Tenants in common, having several estates, must, of consequence, severally do suit (*c*):

(*x*) Compare *Mag. Carta*, cap. 14. & 3 *Ed.* 1. cap. 6. *Westm.* 1.

(*y*) Sir John Braunche's case, *ubi sup.* *Ante*, vol. 1. p. [352].

(*z*) *F. N. B.* 14. D. & 16. E.

(*a*) *Calth.* 68. *Co. Copyh.* s. 57. *Tr.* 133. & see *Litt.* s. 237.

(*b*) 74. a.

(*c*) *F. N. B.* 162. D. 6 *Co.* 1. b.

but coparceners (when admitted as copar- [179]
 ceners) and joint-tenants, taking but one and joint-
 estate, shall do but one suit (*d*). If one co- tenants.
 parcener or joint-tenant of copyhold lands,
 therefore, do suit, the others must of course
 be justified in not performing any. But Contribution.
 it does not appear that they are within
 the statute of *Marlborough* (*e*) to compel
 contribution.

(*d*) *Vide stat. Hib.* 14 *Hen.* III. 6 *Co.* 1. a. & b.

(*e*) *Cap.* 9. (52 *Hen.* III.) See *F. N. B.* 162. B.
 2 *Inst.* 117.

CHAP. VIII.

RENT.

[180]
Forfeiture for
non-payment.

IF the tenant *wilfully* and *absolutely* refuse to pay his rent, it will be a forfeiture of his copyhold ; but not otherwise (*a*).

Distress.

[181]

But the lord, if he pleases, may distrain for it (*b*) ; even upon the copyholder's lessee (*c*) ; as the lands are chargeable while in the hands of the copyholder, or any claiming under him ; but they are not chargeable in the hands of a new tenant for the rent unpaid by his predecessor (*d*). Nor shall the lord be relieved in equity after he parts

(*a*) See *ante*, vol. 1. p. [330-1].

(*b*) 1 *Roll. Abr.* 536. *Copyh.* (E). pl. 4. & 665. *Distress.* (E). pl. 1. *Co. Litt.* 142. a. 150. b. *Cro. Eliz.* 505. *Crisp v. Frier* ; & *ibid.* 524. *Laughter v. Humphrey*.

(*c*) 2 *Brownl.* 279. *Rivet v. Downe*.

(*d*) 1 *Roll. Abr.* 374. *Chancerie*, (P). pl. 1. *Hitcham v. Finch et al.*

with the manor for rents due before his alienation (*e*).

Lord has no remedy for arrears after parting with the manor. *Q.*

It has been already observed (*f*), that the lord cannot vary the ancient rents: and these ancient rents, which have been paid immemorially, are sometimes called *rents of assize*, from their being *certain* (*g*); and for which the lord may distrain of common right; a distress being incident to every service; and it should seem such distress would be within the statute 4 *Geo. 2. c. 28. s. 5.* as that statute mentions expressly rents of assize; and I see no reason why it should be confined to rents of assize issuing out of freehold property (*h*).

Ancient rents.

Rents of assize.

But the rents within the statute of the

[182]

(*e*) 1 *Roll. Abr.* 374. *Chancerie*, (P.) pl. 1. *Hitcham v. Finch & al.*

But *quære* whether he may not bring *debt*. See *Gilb. Ten.* 308-9. & *Harg. N.* (1). to *Co. Litt.* 57. b.

(*f*) *Ante*, vol. i. p. [48].

(*g*) 2 *Inst.* 19.

(*h*) See *Watk. N. cl.* to *Gilb. Ten.* p. 468.

fourth of *George* the Second are those only which were duly answered and paid for the space of three years within the space of twenty years before the twenty-third day of January, one thousand seven hundred and twenty-seven, or thereafter created: yet it should seem that if the *usual* or *accustomable* rent be reserved, it must be proved by the other party that it was *not* so duly answered and paid; as the contrary would be presumed (*i*).

Action.

But an action will not lie on the statute of 32 *Hen.* 8. c. 37. for arrears of rent payable for copyhold tenements (*k*). Nor can the executors under that act distrain for such arrears (*l*).

Avowry.

The lord may avow for his rent in the

(*i*) See 3 *Co.* 9. a. *Heydon's case*.

(*k*) 1 *Brownl.* 102. *Apleton v. Baily*. *Yelvert.* 135. *Appleton v. Doily*.

(*l*) *Bull. N. P.* 57; but see *Gilb. Ten.* 186-7. & *quære*.

courts at *Westminster* (m); but *quære* whether [183]
he can bring debt for it (n), while the tenancy
continues.

(m) *Cro. Eliz.* 524. *Laughter v. Humphrey.* *Gilb. Ten.* 308.

(n) See *Gilb. Ten.* 308-9. & *Harg. N.* (1). to *Co. Litt.* 57. b.

CHAP. IX.

CORPORAL SERVICES.

[184] **ANCIENTLY** it was usual for copyholders to perform corporal services; as to plough the lord's land so many days in the year, or to carry in his corn, or the like : and the remembrance of such services is still preserved in several manors in the kingdom. In many places the tenants still assemble with their teams, &c. on certain days, which are usually denominated *boon* or *due days* ; but the ceremony is now chiefly formal.

It may, therefore, suffice to say, that the lord may enforce a performance of them, if so inclined, when they are really due, by the usual means of distress, or seizure of the lands as a forfeiture, as he may for any other service.

CHAP. X.

OF STATUTES.

WHEN the legislature enacts a general law, it expects a general compliance: the rule is prescribed to the subject, and the subject should regulate his conduct accordingly. The inference, of necessity, must be, that all persons and all kinds of property are comprehended within its injunctions, unless an exception in their favour can be satisfactorily adduced. If no acknowledged right or tolerated usage be infringed, if no injury arise to the privileges or property of an individual with whom it did not intend to interfere, there can be no reason why its rules and obligations should not attach. If, indeed, the consequences of its extension to particular persons or places would be attended with injury to their rights or privileges, such law cannot then be *presumed* to embrace them.

[185]

Introductory
remarks.

[186]

In those cases it would be requisite that such law should *expressly* include them ; as the laws can never be *intended* to do injury to any. If, therefore, the interest of the lord be not prejudiced ; if no injury accrue to the copyholder any more than, under the same circumstances, would accrue to the free ; copyhold tenements must, equally with freehold, be within the public acts of the state (a).

[187] If a statute speaks of “ *lands, tenements, and other hereditaments,*” it seems to follow, of necessity, that it must extend to copyholds ; unless the injury, consequent on such extension, be manifest. It cannot, surely, be requisite to shew that no such injury can arise before the statute can attach ; but the injury must be proved in order to bring them without the statute. If the statute expressly applies to “ *lands, tenements, and hereditaments,*” and copyholds are “ *lands, tenements, or hereditaments,*” it certainly must be necessary to

(a) *Watk. N. lxxviii. to Gilb. Ten. p. 417. 3 Rep. 8. a. Heydon's case.*

adduce some reason why the statute should be so far contradicted as to warrant us in saying that, notwithstanding the express words of the statute, and notwithstanding copyholds *are* "lands, tenements, or hereditaments," they shall not be within its provisions. But, indeed, this seems to be now acknowledged (*b*).

Should a statute, indeed, ordain that the "lands, tenements, and hereditaments," of a person convicted of treason or felony shall be forfeited to the *king*, the injury which the lord would sustain, were copyholds within that statute, would be strongly apparent; and, most unquestionably, it could never be the intention of the legislature to punish a person who had no share in the crime.

An argument is urged in the case of *Harrington v. Smith* (*c*), against the opinion that copyholders shall be bound by [188]

(*b*) *Carth.* 205. *Glover v. Cope*, and see *Cowp.* 705. *Doe v. Routledge, & Dougl.* 716. N. [1]. S. C. cited.

(*c*) 2 *Sid.* 43. & see *ibid.* 74.

an act of parliament, that they are not parties to such act; having no vote in the election of knights. But though this argument is ingenious, it is not very formidable; for, if it would prove any thing, it would prove too much; and so be *felo de se*: it would prove, that as copyholders are not parties to any act, they cannot be bound by *any* act (unless, at least, they are expressly named); while it is acknowledged on all hands that they are within the purview of several.

[180] A statute, it seems, may extend to copyholds in some of its provisions and not in others; so that copyholds may be included in one part, and not in another part, of the same act. Thus the first chapter of the statute of *Merton*, relative to damages in dower, has been adjudged (*d*) to extend to copyholds, while the tenth chapter of the same statute of *Merton*, relative to attornies to do suit, has been adjudged (*e*) not to

(*d*) 4 Co. 30. b. *Shaw & Thompson*; & *ante*, ch. 3. Of Freebench, p. [91].

(*e*) 2 *Inst.* 100. & *ante*, ch. 4. Of Guardianship, p. [106].

extend to them. So the sixth section of the statute 32 *Hen.* 8. c. 28. which gives an entry instead of a *cui in vitá*, has been said to extend to copyholds, though the other parts of that statute do not extend to them (*f*).

Copyholds are within the first chapter of the statute of *Merton*, which is relative to damages on recovery in dower, as already noticed. Statutes which extend to copyholds. 20 *Hen.* 3. cap. 1.

So they are within the third and fourth chapters of *Westm.* 2. which give a *cui in vitá*, *receit*, and *quod ei deforceat* (*g*). 13 *Ed.* 1. c. 3.

But, as the statute 32 *Hen.* 8. c. 28. is said to extend to copyholds, it should seem that the *cui in vitá* is become unnecessary (*h*). [190]

(*f*) See *Gilb. Ten.* 184-5. & see 3 *Co.* 9. a. See *quære*, & *vide post*. And so of many other acts. But, indeed, the subjects of the several chapters of most statutes differ so greatly that this must frequently occur.

(*g*) *Cro. Car.* 43. 3 *Co.* 9. a. As to the first chapter, *De Donis*, see *ante*, vol. i. ch. 4.

(*h*) *Ante*, ch. i. Of Courts, p. [36]. & this chapter, p. [189].

4 *Hen.* 7.
c. 24.

So copyholds are within the statute of 4 *Hen.* 7, with respect to fines being a bar on five years non-claim (*i*).

32 *Hen.* 8.
c. 2.

So they are within the statute 32 *Hen.* 8. c. 2. as to limitations of actions (*k*).

32 *Hen.* 8.
c. 9.

So they are within the statute 32 *Hen.* 8. c. 9. relative to champerty, maintenance, and buying of titles (*l*).

32 *Hen.* 8.
c. 34.

So they are within the statute 32 *Hen.* 8. c. 34. enabling grantees of reversion to enter for condition broken (*m*).

[191]
27 *Eliz.* c. 4.

So they seem within the statute 27 *Eliz.* c. 4. of fraudulent conveyances (*n*).

1 *Jac.* c. 15.
21 *Jac.* c. 19.

So they are within the statutes 1 & 21 *Jac.* relative to bankrupts (*o*).

(*i*) 9 *Co.* 105. a. *Margaret Podger's case*.

(*k*) See *ante*, ch. 1. Of Courts, p. [37]. and vol. 1. p. [345]. N. (*o*).

(*l*) 4 *Co.* 26. a. *Co. Litt.* 369. b.

(*m*) *Ante*, vol. 1. p. [120].

(*n*) See *Dougl.* 716. N. [1]. *Doe v. Routledge*, cited; & *Cowp.* 705. S. C.

(*o*) *Cro. Car.* 550. *Crisp v. Pratt*. *Gilb. Ten.* 182.

So they are within the seventh section 29 Car. 2. of the statute of *frauda*, which requires all c. 3. s. 7. declarations of *trusts* to be in writing (*p*).

So they are within the statute 7 Ann. 7 Ann. c. 19. c. 19. relative to conveyances by infant trustees (*q*).

And the 4 Geo. 2. c. 10. relative to conveyances by the committees of lunatics. (See 4 Geo. 2. c. 10. *ante*, vol. 1. p. [63].)

So copyholds seem within the statute 4 Geo. 2. c. 28. s. 5. relative to distresses for rent arrear (*r*). 4 Geo. 2. c. 28. s. 5.

So they are within the statute 9 Geo. 2. c. 36. of *mortmain* (*s*). [192] 9 Geo. 2. c. 36.

(*p*) See N. (3.) to Co. Litt. 111. b. & Ambler, 151. *Withers v. Withers*.

(*q*) See *ante*, vol. 1. p. [63].

(*r*) See *ante*, ch. 8. p. [181-2].

(*s*) See 1 Ves. 225. *Attorney General v. Andrews*. & *ante*, vol. 1. p. [213]. *Attorney General v. Lord Weymouth, & al.* [See also, 1 Ves. 108. *Arnold v. Chapman*, and 3 Barnew. & Ald. 149. *Doe d. Howson v. Waterton*.]

Statutes which
do *not* extend
to copyholds.
20 *Hen.* 3.
c. 10.

But copyholds are *not* within the tenth chapter of the statute of *Merton*, enabling suitors to make attornies (*t*).

52 *Hen.* 3.
c. 9.

Nor do they appear to be within the ninth chapter of the statute of *Marlberge*, which gives contribution for suit (*u*).

6 *Ed.* 1 *stat.* 1.
c. 12.

Nor are they within the twelfth chapter of the statute of *Glocester*, relative to foreign warranty (*v*).

11 *Ed.* 1.

Nor the statute of *Acton Burnel, de Mercatoribus* (*x*).

[193]

13 *Ed.* 1.
c. 18.

Nor the statute of *Westm.* 2. c. 18. of *elegit* (*y*).

17 *Ed.* 2. *st.* 1.
c. 9.

Nor the statute *de prærogativa regis*, c. 9. relative to idiots (*z*).

(*t*) *Ante*, p. [106]. [189].

(*u*) *Ante*, ch. 8. Of Suit, p. [179].

(*v*) 2 *Inst.* 325.

(*x*) *Moor.* 128. in *Heydon's* case.

(*y*) 3 *Co.* 9. a. in *Heydon's* case.—As to the first chapter, *De Donis*, see *ante*, vol. 1. ch. 4.

(*z*) *Co. Copyh.* s. 55. *Tr.* 125. *Watk. Gilb. Ten.* 6. & 223.

Nor the statute 16 *Ric.* 2. c. 5. as to papal bulls (a). 16 *Ric.* 2.
c. 5.

Nor the statute 11 *Hen.* 7. c. 20. relative to alienations by the wife of the lands of her husband (b). 11 *Hen.* 7.
c. 20.

Nor the statute of uses (c). 27 *Hen.* 8.
c. 10.

Nor the ninth section of the last-mentioned statute, relative to jointures (d). [194]
27 *Hen.* 8.
c. 10. & 9.

Nor the statutes enforcing partition (e). 31 *Hen.* 3. c. 1.
32 *Hen.* 8.
c. 32.
9 *Will.* 3. c. 31.
7 *Ann.* c. 18.

(a) *Gilb. Ten.* 186.

(b) *Ibid.* 181. & *ante*, vol. 1. p. [185]. N. (x).—But if the *freehold* be conveyed to the husband and wife, the *copyhold interest would be gone*; and the lands, of consequence, would be within this statute. *Cro. Eliz.* 24. *Stockbridge's case*.

(c) *Ante*, vol. 1. p. [100]. [185]. N. (x). 328. 2 *Siderf.* 41. 73. *Harrington v. Smith*.

(d) *Gilb. Ten.* 182. See 1 *Ves.* 54. *Walker v. Walker*.

(e) *Co. Copyh.* 2. 54. *Tr.* 125. *Gilb. Ten.* 185.

Note, it is said at the end of *Calthorpe* (*Read.* 98), it was agreed in the Duchy Chamber, that if two joint-tenants, copyholders in fee, make partition, it is good, and no forfeiture nor alienation. But in N. (1.) to

32 *Hen.* 8.
c. 28. s. 6.

Nor the statute 32 *Hen.* 8. c. 28. s. 6. as to a discontinuance by the husband of the wife's land (*f*).

32 *Hen.* 8.
c. 28.

Nor the statute 32 *Hen.* 8. c. 28. relative to leases by tenants in tail, or persons seised in right of their wives or churches (*g*).

Co. Litt. 59. a. (*Hale's MSS.*) it is said that parceners of copyhold cannot make partition without the lord's license. See also *Ambl.* 268. *Oakley v. Smith*, & 3 *Bosanq. & Puller*, 378. *Burrell v. Dodd*. And it was adjudged in that case that *customary* estates are not within those statutes.

(*f*) *Moor.* 596. *Bullock & Dibley. Gilb. Ten.* 178.

(*g*) *Gilb. Ten.* 179. 185. *i. e.* as I conceive, so as to authorize a lease without license or custom. But if custom warrant a lease for twenty-one years, or a license be obtained for that period, I apprehend such lease would be within the statute, and bind the wife and issue. A lease by custom or license, is a common-law interest: and though the statute cannot authorize the copyholder to create a common-law interest to the prejudice of the lord, it may certainly bind that interest, when created under a custom or license.

The person taking such lease would not become a tenant to the lord, or a copyholder: the person holding by copy (or the lessor) would be the lord's tenant. The lord, therefore, would not be injured by the

Nor the statute 32 *Hen.* 8. c. 37. empowering executors to distrain (*h*). *Sed quære.* [195]
32 *Hen.* 8. c. 37.

Nor the statutes of wills (*i*).

32 *Hen.* 8. c. 1.
34 *Hen.* 8. c. 5.
29 *Car.* 2. c. 3.

Nor the statute 13 *Eliz.* c. 4. for making accountants lands liable to pay debts due to the crown (*k*). 13 *Flix.* c. 4.

Nor the statute 21 *Jac.* c. 16. of limitations, so as to bar an action for a fine (*l*). 21 *Jac.* c. 16.

Nor the statute of 12 *Car.* 2. enabling a father to appoint a guardian to his child, when there is a custom for the lord to have 12 *Car.* 2. c. 24. s. 8.

extension of the statute to such leases, and, consequently, the statute ought to attach on them agreeably to what has been said (p. 185, &c.).

But *quære*, as the statute requires that the lands be such as were most commonly letten to ferm for twenty years before. See s. 2. (3). Yet a letting at will is sufficient. See 2 *Bl. Comm.* 320.

(*h*) See *ante*, ch. 8. Of Rents, p. [182].

(*i*) 2 *Atk.* 36. *Tuffnell v. Page*. *Ante*, vol. 1. p. [122].

(*k*) See *Gilb. Ten.* 189.

(*l*) *Ante*, vol. 1. p. [321].

the wardship ; but it should seem that they *are within* this statute in cases *where no such custom prevails* (m).

[196]
14 Geo. 2.
c. 20. s. 9.

Nor the statute of 14 Geo. 2. c. 20. s. 9. (n), relative to estates *pour autre vie* ; for that section is expressly confined to cases in which there is *no* special occupant. Now there can be no *general* occupant of a copyhold (o) ; and, of consequence, this statute cannot possibly extend to copyhold property. And, indeed, it would not be here noticed was it not for the observation in *Ambler*.

(m) *Ante*, ch. 4. p. [104].

(n) See *Ambler*, 151. *Withers v. Withers*.

(o) *Ante*, vol. 1. p. [302-3].

CONCLUSION.

IN the preceding pages it has been noticed, [197]
that, according to the feudal institutions from
which our legal system of real property is
derived, the absolute or ultimate right or
dominion in lands was vested in the social
body ; and, of consequence, must have been
considered as virtually resting in that person
who was the representative of the state. The
king was the representative of the whole
nation ; and the landed property of the
whole nation was, therefore, to be held im-
mediately or mediately of the king. The
kingdom was divided into portions or dis-
tricts, and partly allotted to the several
inferior chiefs, and partly remained in the
king's hands. The inferior chiefs, in like
manner, granted out portions of their terri- [198]
tory to others ; and those others also granted
out portions of their possessions to be held of
themselves.

the wardship; but it should seem that *are within* this statute in cases *where* custom prevails (m).

[196]

14 Geo. 2
c. 20. s. 9.

Nor the statute of 14 Geo. 2 relative to estates *pour au* section is expressly confined; there is no special occup; be no *general* occup; and, of consequence, possibly extend to c; indeed, it would. *ve resumed* them at not for the obs' *him held* merely at his

(m) *Ante* *him* behaved himself well, was
(n) *Se* *as*, and faithful in his returns, he
(o) *P* continued in the possession of the
lands: and even when he died, his chil-
dren were frequently permitted to succeed
him. This, however, depended upon the
pleasure of the lord: and if the lord con-
sented that some of the posterity of the
deceased tenant should again occupy the
lands, it was for him to select the indi-
vidual. Hence the variety of customs as to
descents.

could not acquire any absolute chattels, they, of course, held when the villein died, however, often by the will of the villein, and acknowledgment was not a matter generally required of a portion in order to pass to the whole. Hence the best beast or render of the best beast which, from its analogy to the heriot, was called by the same term.

When the heir succeeded to the lands of his ancestor, he did it by favour also, and not as of right. Hence he too acknowledged his lord's munificence by paying his relief or fine.

Holding thus at the will of the lord, the villein could not alien: nor could the absolute or pure villein even relinquish his own possession. When, however, the villein was permitted to determine his tenancy, he could only cease to be a tenant himself; and had no authority to deliver

[200]

What remained in the immediate possession of the king or other lord, was said to be *in demesne*, and either lay waste, or was cultivated by his villeins for his use.

Small portions of these demesnes were often allotted to particular villeins, under stipulated returns; and the overplus of the profits they, of course, were entitled to for their support. As the assignment of these portions, however, was entirely optional in the lord, so he might have resumed them at his pleasure. The villein held merely at his will.

[199]

If the villein behaved himself well, was industrious, and faithful in his returns, he often continued in the possession of the lands: and even when he died, his children were frequently permitted to succeed him. This, however, depended upon the pleasure of the lord: and if the lord consented that some of the posterity of the deceased tenant should again occupy the lands, it was for him to select the individual. Hence the variety of customs as to descents.

As the villein could not acquire any absolute property in his chattels, they, of course, must have fallen to his lord when the villein happened to die. The lord, however, often relinquished his claim in favour of the villein's relations; but, as an acknowledgment that such relinquishment was not a matter of right but of favour, he generally required the payment or render of a portion in order to evidence his right to the whole. Hence the payment or render of the best beast or good; which, from its analogy to the military, or proper, heriot, was called by the same term.

When the heir succeeded to the lands of his ancestor, he did it by favour also, and not as of right. Hence he too acknowledged his lord's munificence by paying his relief or fine.

Holding thus at the will of the lord, the villein could not alien: nor could the absolute or pure villein even relinquish his own possession. When, however, the villein was permitted to determine his tenancy, he could only cease to be a tenant himself; and had no authority to deliver

[200]

over the possession to another. The lord, however, sometimes accepted his resignation under confidence to re-grant the lands to a person whom the tenant should appoint. This was optional in the lord; and, therefore, he did it under what conditions he chose to insist upon. Hence the fine on alienation, or on the in-coming of a purchaser or tenant.

When the lord had accepted the resignation or surrender of the former tenant, he called in the person whom it was wished should succeed him; that the lord might be satisfied that he was a proper person to be admitted in his tenancy, and to give him the possession of his lands. Hence the origin of our present admission; of the oath of fealty; and of the livery of possession or seisin which is still symbolically given.

[201]

The new tenant, like the old one, was equally to hold at the will of the lord; and if he ceased to comply with it, the grant also, of consequence, ceased. Hence the doctrine of forfeiture.

Upon the whole, therefore, the law of copyholds seems founded upon principles rational and just in their origin, and perfectly adapted to the manners of the age and people when and among whom they were established.

The right of the lord to his fines and his forfeitures, his privileges and emoluments, remains indisputably good. As copyholds were at the will of the lord, it belonged to the lord to affix the terms of his gift. The ancestor accordingly accepted the gift, and was thankful: and the heir, who now enjoys, ought not to murmur because he has not more than his forefathers, and but for whom he would have nothing to hold: and, more especially, as the alterations that a change of manners has introduced, have been uniformly for his benefit. The courts have established his *right* to succeed; have established his *right* to alien. They have even relieved against forfeitures, and restricted the lord in his fines.

[202]

The purchaser has no better cause to complain; he knew, or ought to have known, the terms to which the lands were subjected.

He purchased with his eyes open ; and if he has made a bad bargain, it can only be the consequence of his own indiscretion. If the lands are less valuable than freehold, he has paid a consideration for them proportionably less.

[203] But, on the other hand, it must be evident, that though the principles on which the doctrine of copyholds is founded were originally wise in themselves, yet that many of them are now obsolete, and many forgotten. The necessity, and even propriety, of their continuance has ceased to exist. We have now no villeins, thank God ! and the laws which could relate only to villeins ought, therefore, to be swept away. But the progress of manners is always gradual, and often imperceptible ; and hence a system is frequently suffered to continue when its principles are disowned.

The wisdom and expediency of a general law, to which all landed property should be alike subject, and the confusion and manifold evils which are inevitably attendant on a diversity of local customs, must be apparent to every one. A nation can scarcely

experience a greater curse than a complicated and discordant code. For, according to the remark of an ingenious and elegant writer, "so soon as justice becomes a science, so soon does injustice become a trade."

The more varied and complex the laws, the less they must necessarily be understood ; and the less they are understood, the more will the artless and innocent be placed in the power of the artful and rapacious.

As we have manifestly outlived the principles of copyhold-law, why should that law be continued? The happy consequences of the statute of the 12th of *Charles the Second*, which abolished so many feudal incidents, and turned the generality of tenures into that of common socage, hold out to us the strongest encouragement to reduce our laws of real property still more to the standard of wisdom by reducing them to the spirit and manners of the times. Why must we be perpetually appealing to the fool's idol of precedent? Why be dissatisfied with common sense? May not what was just at one period, become, under other circumstances, unjust? Or will

[204]

truth be no longer truth because our forefathers happened to blunder? Or, finally, may not that which was wise in the infancy of a state become inapplicable when men cease to be rude?

[205]

There are many difficulties, it is true, in the way of a general enfranchisement: but what is there of general importance that can be effected without having difficulties to encounter? Without amelioration we must degenerate. A system of jurisprudence cannot remain perpetually the same, while the manners of a nation change. The principles which originated in barbarism, cannot meet the wants of an improved and refining age. The manners of a nation must be stationary, or stationary laws cannot long regulate its conduct. The principles of nature are fixed and immutable, and laws founded on those principles will always apply; but laws founded on arbitrary impositions, or the peculiar manners or necessities of a particular age, should not be permitted to shoulder out common sense from society, or to encumber the conduct of persons to whom they cannot, in reason, relate.

If every thing desirable cannot be effected, it does not follow that we ought, therefore, to do nothing. If an immediate and universal enfranchisement of copyholds cannot be accomplished, an enfranchisement may be effected partially and by degrees. The more we advance towards perfection, the number of evils which we leave will be less. Thus an act may be passed obliging every lord seised in *fee simple* to enfranchise, on so many years average of the seigniorial emoluments. The average may be ascertained by commissioners or a jury. *Tenants in tail* may also be enabled and compelled to enfranchise, as enfranchisement would be so evidently beneficial to the nation at large. A tenant in tail may now, by certain means, alien *the manor* in fee; what impropriety then would there be in enabling him to convey the *freehold of a few copyhold tenements* by some solemn deed? And the power of enfranchisement might be extended as circumstances would admit. The prejudices of the ignorant, and the opposition and arts of the interested, must be expected and met; but we should meet them with manly firmness, while conscious of the integrity of our views. We should recollect, that we cannot

[207] reason from a matter of fact to a matter of right : and that it does not follow of necessity that, because absurdities or inconveniences exist, they, therefore, ought to be cherished. There cannot be a more certain cause of destruction than the accumulation of what is absurd.

APPENDIX.

No. I.

CUSTOMS OF DYMOCK.

Grant and Confirmation of sundry Rights and Customs to the Lord and Tenants of the Manor of Dymock, in the County of Gloucester.

OLIVER, Lord, protector of the commonwealth of England, Scotland, and Ireland, and the dominions and territories thereto belonging. To all to whom these presents shall come, greeting. We have received the inrollment of an indenture dated the 15th day of April, in the seventh year of the reign of the late sovereign Lady Queen Elizabeth, made between the Right Honourable Walter Vicecount Hereford, Lord Ferrers, of Chartely, and lord of the manor of Dymock, of the one partie, and Florys Barston, gent. and others, tenants of the said manor, of the other partie ; as also a schedule

and memorandum under the said indenture made, and in the high Court of Chancery remaining of record in their words. (Then follows the indenture of agreement in *hæc verb.* and after that the schedule.)

A schedule indented of the old and antient customs of the manor of Dymock, in the county of Gloucester, used within the same manor by the customary and antient demesne tenants of the said manor, tyme out of mynde of the remembrance of man ; between the Right Honourable Walter Vicecount Hereford, Lord Ferrers, of Charteley, and lord of the manor of Dymock, of the one party, and the custom and antient demesne tenants of the manor aforesaid, of the other party, as hereinafter expressed.

Tenants to hold their estates to them and the heirs of their bodies. See my *Copyh.* v. 1. p. 149.

Inprimis, the custom of the said manor of *Dymock* is and always have been, for tyme out of mynde, that the custom and antient demesne tenants of the same manor, have used freely to have and to hold their lands and tenements within the manor aforesaid, to them and their heirs of their bodies lawfully begotten ; the reversion or remainder thereof in fee to the lord of the manor aforesaid.

Item, that they have used allways, all the time abovesaid, when they be disposed, or will sell, give, grant, or alienate their lands or tenements to any person or persons whatsoever, to make a *state* * thereof by free deeds, indented, or poll deeds to such persons whatsoever.

Tenants may alien.

(* A statement, C. W.)

To have, to hold, to them and to their heirs of their bodies, lawfully begotten, the remainder thereof to the lord and his heirs for ever, with licence of the lord of the manor, in that behalf obtained.

Item, the custom is, that the lord of the manor for the time being, have always used, for the time aforesaid, to give and grant in the court or courts baron there within the said manor, upon the request of any tenant or tenants, disposed to make alienation, as is aforesaid, such licences to do the same. And the same is to be inrolled in the court rolls of the same manor, by the steward of the lord for the time being.

The lord to grant license to alien. In the debate before a committee of the House of Commons in 1777, whether these tenants might vote for knights of the shire? Mr. *Bearcroft* said, a *mandamus* would lie to compel the lord to grant a license if he refused it.

Item, that the tenants aforesaid, for such licences and alienation, as is aforesaid, have used to pay the lord of the manor one year's

Relief to be paid for license and 2s. to the steward. My *Copyh.* 287.(x). 322.

rent, by the name of a relief; and to the steward, for a copie of the said licence, two shillings.

Two courts to
be held in a
year.

Item, the custom is, that the lord of the said manor shall yearly, two times in the year, keep his law days and courts baron in manner and form following, (that is to say), one within a month next after the feast of *St. Michael*, and the other within a month after *Hocketuesday*.

Alienation to
bar the heirs
of the alienor.

Item, the custom is, that all and every such alienations made of lands or tenements with a licence, as is aforesaid, *be a bar* for ever by the custom of the said manor, to the heir or heirs of such tenant or tenants, and also to the lord of the said manor and his heirs, to demand or claime any the lands or tenements so aliened, as is aforesaid, for default of issue of the body of the tenant, that alieneth, and that no writs of *formedonne in descendre* for the heir, nor *remainder* for the lord, hath been used to be commenced or brought within the said manor, or at the common law, by any heir or heirs of the tenants aforesaid, so aliening, as is aforesaid, or by the lord or his heirs, for the lands aliened with licence, as

is aforesaid, for that every such tenant may alienate, as is aforesaid, by the custom of the said manor.

Item, the custom is, that every tenant aforesaid, shall pay to the lord and his heirs, at every their deaths, his best, that, in value, shall be the best, for the harriott and relief, which is one year's rent for every messuage whereof every such tenant shall dye seized, and not oŕwise except it be specially reserved upon their grants heretofore made, and if the tenant that deceseth dyeth, having no cattle of his own, then to pay his best implement of household stuff for the harriott, and, for his relief a year's rent.

Heriot and relief.

Messuage.

Item, the custom is, to have a three weeks court, if there be any playnt of debt, trespass, or otherwise, according to the custom of the said manor, affirmed by any person within the said manor, till the same be ended and tried, and that all the customary lands and tenements within the said manor, be pleadable within the aforesaid manor, by writ of right close, and not at the common law.

Manor court to be held every three weeks, if occasion be.

Courts to be held on persons bringing writ of right close on warning every three weeks till determined.

Item, that the custom of the said manor is, that if any man doth demand any customary land within the said manor by writ of right close, against any tenant within the manor aforesaid, there to be brought according to the custom of the said manor, That then, upon sufficient warning to be given unto the lord or steward of the said manor, they have used always to have a three weeks court, untill the matter in controversie be tryed.

Proceeding on writ of right close.

Item, the custom is, that if a writ of right close, according to the custom of the said manor, shall be brought within the said manor by him that have cause to demand customary lands therein, That he that purchase or bring any such writ, shall at the law day and court baron, deliver the same writ unto the steward in the presence of the court; and the stewards to breake the same writ in the face of the court, and to read the same, and to have six shillings and eight pence for the breaking the writ, and the bailiff three shillings and four pence, and then always the steward, or his sufficient deputy, every three weeks to keep

the lord's court within the said manor, till the matter be tryed according to the custom of the said manor, or otherwise made an end of by any way whatsoever, so that he which bringeth the writ shall bear the steward's charge.

Item, the custom is, that the lord is to have a steward certayne of the said manor, who always shall keep by sufficient warrant from the lord of the said manor, under his hand and seal of arms; and the warrant of the said steward always, at every court upon demand, to be read in open court, for the true knowledge of the tenants who is the steward of the same manor, if it be required; and the said warrant immediately after to be delivered unto the tenants aforesaid, according to the custom of the said manor, so it be no patent of the stewardship.

The lord to appoint the steward.

Item, the custom of the said manor, for the time aforesaid, have been, that all the tenants of the said manor that do any service in the homage charged, or any other being in any office that day, at the two general courts. to be twice holden by the year

The lord to give two dinners in a year at his courts to the tenants.

as is aforesaid, to have their dinners at the onlie costs and charges of the lord of the said manor for the time being.

Appointment
of the homage.

Item, that the custom is, that the lord or his steward for the time being, at every his said two courts as is aforesaid, shall chose one of his freebenchers, or free suitors of court, and the tenants to chose one other; and that they two, for that time, to elect and chose the twelve men * for every then court days for the lord's homage; and if they cannot agree, then the steward of the lordship to chose and elect the twelve men indifferently, between the lords and the tenants aforesaid.

How the
lands of felons
shall be dis-
posed of. See
*Robins. Ga-
velk.* b. 2. c. 4.

*Vid. stat.
Prerog. Re-
gis, 17 Ed. 2.
c. 16.*

Item, the custom of the manor is, that if any of the lord's tenants there do commit any felony, and thereof be attainted by law, by any ways or means whatsoever, that then the lord of the said manor shall not have his lands holden of him by escheate, nor the queen's majesty, the day, year, and waste, but the next heir ymmediately must have

* See 3 *Bl. Comm.* 351.

the same, for that the father ought to go to the bough, and the son to the plough.

Item, the custom of the said manor is, that no tenants shall alienate, give, or grant his lands or tenements, or any parcel thereof, otherwise than is aforesaid, without the license of the lord, upon payne of forfeiture of his tenements soe granted, but only for twenty and one years in possession, or under, by leave upon reasonable suit and request.

Tenants not to alien without license.

Item, the custom of the said manor is, that at every court there to be holden within the said manor, there must be *three* benchers of the free suitors to the court at the least, or else no court to be holden within the said manor; and the benchers to be amersed by the steward's discretion.

Suitors to be benchers.

See my *Copyh.* vol. 1. p. [9]. N. (o).

Item, the custom of the said manor is, that the lord's steward may, at any of the two law-days, demand the sight of such evidences as any tenant within the said manor holdeth his lands by; and if they or any of them refuse to show the same to the steward at the next law-day, to the end it

Tenants to show their titles on demand, to the steward at the law courts.

may be inrolled, and no sufficient cause, by burning the evidence, embezelment, or such like, why the same cannot be shewed, then the lord shall seyse the lands till the evidence be shewed.

Deeds to be
inrolled.

Item, the custom is, that every tenant who shall hereafter have any deed of entayle made to him by licence as is aforesaid, shall within one year next after the date of the same deed of entayle, bring the same to the steward to be inrolled, upon payne of forfeiture of so much as he paid for his licence.

License to be
put in execu-
tion within a
year and a
day, other-
wise to be
void.

Item, the custom is, that every tenant which shall have licence granted to alien, shall execute the same licence within the space of one year and a day next following the same licence, or else the licence to be void.

Tenants dying
without issue
of their bodies,
the lord to have
their lands in
fee.

Item, the custom is, that if any tenant die seized without issue of his body, that then the lord shall have ~~the~~ land to him and to his heirs to dispose of at his and their will and pleasure, after such estates expired as were made by the licence of the lord by the same tenant that deceaseth.

Item, the custom is, that the wife of every tenant that dyeth seized, shall have the third part for her dower, as well against the heir as against the lord. Widows to have dower.

Item, It is agreed that the tenants shall, from time to time, do such services in the time of war as they have heretofore accustomed. Tenants to do services.

Exemplified under the Great Seal.

2nd Dec. 1657.

No. II.

CUSTOMS OF YETMINSTER.

25 CAROLI SECUNDI, 1673.

*Preced. in
Chan. S.
Devenish
v. Baines.*

*Divers of the ancient Customs of the Manor
of Yetminster prima, alias Ubury prebend,
within the Hundred of Yetminster, in the
County of Dorset.*

THE lord of y^e. manor ought to find a steward to keep two courts there every year at y^e. least, y^e. one ab^t. Hocktide the o^r. about Michas.

All y^e. ten^{rs}. of y^e. said manor are bound to do their suit & service to the same courts upon reas^{ble} warn^t. given them by y^e reeve upon pain of amercement. The reeve is the lord's chief officer to gather up his rents and to levy the fines, heriots, and amercem^{ts}. all wch he is bound to deliver & make account at Sarum after Hocktide & Michas if y^e lord so require it; & if he be robbed by the way or by his negligence or waste, or do consume any part or the whole of the

lord's money in his hands the ten^{rs}. are bound to make satisfaction to the lord.

The reeve is to be chosen at every Michas court for every yre in this sort:—the whole homage must deliver 3 ten^{rs}. names to y^e stew^t wh['] of 1 must dwell in Leigh the o^r. in Chetnoll and y^e. 3rd in Yetminst. and y^e. steward is to choose of those three whom he lists. Wch reeve for do^s. his office is to be allowed his own rent of the lord for that yre & shall have all the tops & bark of the trees that are assigned out of the lords woods to the ten^{rs} for the reparations y^e. yre.

Any ten^t may assⁿ. nominate or surr^r. his tenem^t. to his child or to any o^r person whom he listeth at any court before the homage or out of y^e. court before the reeve & 2 or more of y^e ten^{rs}. or if it so happen that the reeve or any of the ten^{rs}. be not present, he may make notwithstanding a good surr^r. nominatⁿ or assignm^t. before suffic^t. witnesses, wheresoever he shall be, by deliver^e. a rush or a straw or by say^s. these words or the like I *A. B.* do surr^r. my tenem^t. wch I hold of *E. D.* my lord in the manor of Yetminst. *prima* into y^e hands of

See *Magna Carta*, 9 Hen. 3. c. 32. *Dalrym. F. P.* 95. by which the tenant was obliged to except sufficient to answer the services.

the lord to the use of *E. F.* my son or any o^r. or by any o^r. words assignm^t. limit^s. or nominat^s his bargⁿ. sav^s. & except^s. to myself after y^e. custom of the manor there such a part of y^e. dwell^s. house &c. & such pcels of-ground &c. if he list to reserve any to himself if not then with^t. any sav^s. provid^d. always there be assign'd sufficient to y^e. ten^t. over & above y^e. excepts to pay the lord's rent & to discharge reparat^{ns}. wch shall be adjudged by y^e. whole homage at the same court when the ten^t. doth claim to be so admit^d., & if there be not enough to dischge it y^e homage shall be chged wth. y^e. s^d. rents and reparations.

Whats^r. y^e. husb^d. doth except unto himself having then a wife y^e same wife shall enjoy y^e. same excepts in as large a man^r. dur^s. her life only as her said husb^d. did or might do. The p^ty that doth make such surr^r. shall no more be called a ten^t, but an exceptsor & shall enjoy such excepts by a written copy of excepts dur^s. his life with^t. doing suit & service or pay^s. any rent & he to whose use y^e. surr^r. was made shall be the tenant.

If any such exceptor will set to farm his excepts y^e. ten^r. to y^e. same bargⁿ. shall rent the same if he list one penny within any o^r. man's price y^e. with^r. fraud shall offer the same.

If any ten^r. do assⁿ. or surr^r. out of y^e. court & y^e. surr^r. or assignment be made or done as is afs^d. & y^e. s^d. person whe^r. he be man or woman or child to whose use the surr^r. or assignm^t. is taken do in like sort surr^r. or assⁿ. again to ano^r. before a court kept, [The] surr^r. or assignm^t. how many soever they be are all good & y^e. custom is y^e. y^e. ten^r. who cometh to the next court to be admitt^d. to y^e. same bargⁿ. shall before he be admitt^d. ten^r. satisfy the lord of all such fines & heriots as be due to y^e. lord for so many surr^r. or assignm^t. as shall be made of y^e. same bargⁿ. since the last court before. All wch fines & heriots shall be cess'd by the homage & y^e. reeve accord^d. to y^e. cust^m. if the lord and he cannot otherwise agree.

The p^ty to whose use any surr^r. or assignm^t. is made shall at y^e. next court to be kept upon reas'ble warn^t. or before, sue to y^e. lord or his officer & tender a reas'ble fine

& an heriot for every surr. or assignm. th'of made since the last court & if he can. agree with the lord after 2 courts y^e. reeve & ten^t. be^s. sworn to be indifferent bet: y^e. lord & y^e. ten^t. shall rate & access y^e. fine & fines wch be^s. so rated by the major part of y^e. homage shall bind the lord to admit y^e. p'ty ten^t. & to accept y^e. fine.

If surr. be made to a maid or widow & so she become ten^t. he y^e. shall marry wth her shall be taken ten^t. in her right for one penny to the stew^d.

When any ten^t. is admitt^d. he or they shall pay unto y^e. stew^d. for every tenem^t. 2s. & for every half place 12d. & for every cott^s. 6d. & shall give unto the homage a gallon of good ale & a loaf of bread wch is y^e customary hold and there was never any other wright^s. within y^e. manor sav^t. copies of excepts wch are before ment^d.

Every ten^t. must reside upon his tenm^t. unless upon good cons'ons he be licenced by y^e. lord in y^e face of the court.

No ten^t. or exceptor can let his tenem^t.

or any p'. th'of for longer term than for one yre at a time ; if he do he is amerc'd for it.

If any waste be done & so found by y', homage the p'ty so offend'. shall for y'. 1st. offence pay double damages, for y'. 2nd offence treble damages as shall be assess'd. by the homage upon their oaths, & offend'. in y'. same y'. 3rd time shall forfeit his tenem'. or cottage to the l'.

Item, upon the death or surr'. of y'. ten'. y'. lord shall have y'. best quiet [*quick*] beast of y'. s'. ten'. in y'. name of a heriot, & if he have no quick goods then y'. best goods of his household stuff or apparel w'ch the reeve by his office shall presently seize upon & cause to be appraised by some of y'. ten'. to the lords use & y'. lord is to choose whe'. he will have y'. goods or y'. price.

Item, y'. widows whose husb^d. die ten'. shall enjoy such tenem'. as were their husb^d. at the time of their deaths dur^t. their widowhoods if they live chastely, & may in their widowhood lawfully assⁿ. her bargⁿ. by surr'. as her husb^d. might in his life time.

Item, all widowers & widows dur^t. all y^e. time of their widowhood shall have 18d. yearly abated of their rent for every tenem^t. they hold and y^e. reeve shall be allowed it in his accompts to the lord.

Item, no tenem^t. can be let for any longer est. than for one life only.

Item, there can be no reversⁿ. granted to any.

Item, if any ten^t. die hav^t. no wife with^t. limit^s. over his tenem^t by surr^t. or assignm^t. as is aforesaid, then y^e. L^d. may lawfully dispose of the same tenem^t. or tenem^{ts}. at his pleasure, but he can grant it but for one life only, & in such case he may make choice of his ten^t. & may make his own fine without the ten^{ts}. assessm^t.

Item, every ten^t. withⁿ. the manors hav^t. any decayed house in timber, if upon his request y^e. lord refuse to allow him necess^r. timber in his woods, may cut so much timber grow^t. in & upon his own tenem^{ts}. as shall be tho^t. convenient by a skilful carpenter to repair y^e. same without y^e. assignm^t. of the

lord or his officers, & if any ten'. having such need of timber & hath none grow'. upon his own tenem'. then he must req'. the lord or his officers to appoint him so much timber grow'. upon any o'. tenem' of the same manor as shall be tho'. needful to repair his decayed tenem'. wch the lord may do or his officers by his appointm'. by our cust^m. as y^e. rinds and lops of all such timber be left in y^e. ground to his use that owneth y^e. ground.

Item, no customary ten'. can sell any timber grow' upon his tenement o'. than such as shall be thrown down with y^e wind or hedgewood left upon y^e. new digg^s. of any of y^e ten' parts of grounds, but he may with'. assignm' or controlm' take suffic' houseboot hayboot ploughboot & fireboot topp & lopps at seasonable times any trees timber or fuel grow' in and upon his own tenem' so he make no waste, wch waste if any be done must be adjudged by y^e homage & punishable as afores^d.

Item, there are customary quarries lying in y^e east downs wch is y^e lord's demesns & is known by y^e name of Quarry Close in y^e wch

it is l'wful for y^e ten^{ts} to dig & carry away at all times such stones as they shall need to build or repair their houses.

Item, y^e. stew^d. shall & ought to choose at y^e end of every court 2 of the ten^{ts}. to be assessors of all y^e amercem^{ts}.

No. III.

CUSTOMS, &c. OF WEARDALE, IN
DURHAM.

Articles and instructions to be inquired into, on behalf of the right reverend father in God, Tobie, by the *grace of God* bishop of Durham, concerning all and singular the manors, castles, lands, tenements, pears, prerogatives, regalities, forests, privileges, customs, tenures, rents, services, and heredit, &c. within certain lordships, and the several parishes of Stanhope and Walsingham, in the co. palatine of Durham and Sadburg, being parcel, and belonging unto, the said right reverend father, in the right of his said bishopric of Durham, *A. D.* 1595.

What lands or tenements within the precincts aforesaid, being holden of the said bishop, *in capite*, as in the right of his bishopric, hath been purchased or aliened, with licence of some of his predecessors first had and obtained, &c.

You shall inquire and present the names of all such persons, who hath entered in and to any lands or tenements holden of the said bishop *in capite*, within the limits and lordships aforesaid, without due livery after the death of their ancestors, tendued, had, and purchased, and of what yearly value the said lands are.

Several presentments of lands holden *in capite* of same date.

Deposition of Ralph Trotter in pursuance of the above noticed charge.

My Copyh.
vol. i. p. [8].

And he further saith, that the privileges of the game of fishing, fowling, hawking, and hunting, within the said forest and park, (of Stanhope) within the *manorhood* of the inhabitation within the parish of Stanhope, belong to the bishop of Durham's forester for the time being.

So also in another presentment of the tenants in 1595, we find that Richard Mowbray hath a *fine or a copy* of certain parcels of ground granted to him at the *Halmot Court* at Wolsingham, by Thomas Calverly

steward, dated 3rd May, 20th year of her Majesty's reign in Bishop Barnes times. So of other presentments, 1595.

COPYHOLDER'S SERVICE.

We find that the copyholders within the 1595. parish of Stanhope, do hold their several fines by surrender and copy of court-roll, that is to say, a tenant dying seized of any copyhold estate, his wife ought at the first, second, or third *halmot* court, then next after kept at Wolsingham, to come and fine for the same during her life, and to pay five pence for the enrolment, and five pence for taking out the copy and for her *fosse*, according to the copy. And likewise the eldest son, after the death of his father, and through default of sons, the daughters *jointly** are to fine and do in manner aforesaid. Also the copyholders are to do their suit of court two times in the year, at the foster court, to be kept within the forest of Weardale, and do their services unto her majesty upon the borders, 14 days, upon their own costs and charges; that is to say, 10 days to remain upon the said borders, if need so require,

* My Copyh.
vol. 1. p.
[278].

and four days to come and go to the said borders.

CUSTOMARY TENANTS.

Those ought to be paid yearly for the same, 18s. being termed by the name of bond rent, and likewise 9s. and 6d. being called foster money, and six bushels of oats, being called foster corn, ought yearly to be paid, out of the said lands, unto the Bishop of Durham, or officer of Roughside-Ward. And the tenants or occupiers of the ground ought to carry, as need requireth, all the running geare belonging to the mill called Stanhope Mill, and to *theeke* all over y^e. *lowther* of the said mill. But whether the tenants or occupiers of the said land are bond tenants, or what other service they do, or ought to do, for the same, we cannot present; saving, that the carriers of the said running geare have such custom and privilege in the said mill, that the hopper being empty, their corn ought to be ground next.

Widow.

Custom of tenants right, or customary tenants. Husband dying seized, widow, during

her widowhood, is to have her widow-right of said ten'. and after her death or marriage, said ten'. to come and descend to Descent. the eldest son, if the tenant have any son, through default of son to the eldest daughter, and through default of daughters, to the next of kin.

We find, that it is a custom, that if the younger brother do agree with the eldest brother, in the life-time of the father, for all or any part of the tenement, that then that agreement shall stand in effect to exclude the eldest brother who took the composition.

Customary tenant might let, set, grant, Take penny. or sell his tenement at his pleasure, but the purchaser must, after such sale, come at some court after, kept within the said forest, to be sett tenant, and to pay a take penny or custom penny.

Any tenant may, upon his death-bed, give his ten'. to any of his younger sons, with the consent and assent of the eldest, but not otherwise.

Customary tenants pay yearly rent to bishop two times in the year,—do suit and court, two times a year,—pay yearly, at every foster court, next after Easter, a custom penny, and do their service on the borders, as before of copyholders ;—keep watch and ward day and night, from Lammass, or Michaelmas, or St. Andrew's Day, at divers and sundry fords and rakes for resisting the Scotts, and safeguard of themselves and their goods ; and also to make their appearance at musters, and frays, and following the thief, and withstanding and expelling the enemy ; some with good horses, and some with meaner, and some on foot ; and some have used the said horses towards the borders for their own ease, and some of them have sometimes done their said service upon the borders, on their best horses, for their better abilities and their own pleasures.

Presentment, 26th May, 1601.

Custom of tenant right as to widow and descent as before ; agreement between brothers, in *vita patris* as before ; so as to sale and devise, watch, &c.

We find that there is a Slough-hound *Post.* which now is, and heretofore hath been, kept and maintained within the said park and forest of Weardale, which said hound, or some other, is to be kept and maintained from time to time as need requireth.

Whereas we have given our charge for the maintaining of Slough-hound ; so it is that we have had and already have had of keepers upon the costs and charges of the park and forest only.

Now there is sundry that would withdraw themselves from bearing and maintaining the said Slough-hound, and some of them do deny any payment for the maintenance of the said Slough-hound.

Therefore we do humbly crave your lawful favour, that we be not separated but continue in maintenance in the said Slough-hound, as ever heretofore it hath been used and continued.

The pallicer hath usually 13 s. 4 d. as a yearly fee, for repairing and making the paile or fence to the said firth ground, containing about five days work.

We find, that to a master forester belongeth the keeping of the lord's court two times in the year ; and also to him belongeth 20 nobles fee, yearly, and also one dale of meadow containing as aforesaid, about 15 days work, and is called Foster Dale ; and also there is belonging to the master forester two horse-gates in the firth.

Original in Offic: Audit: Dunelm: Shewn at York, before commissioners, 1635.

The Slough-hound was to trace the Scotts, who stole cattle in the night. When they missed them the dog was turned out to hunt their footsteps in the morning *.

* See *Skene*.

Forest Court in Weardale.

WHEREAS it was given us in charge, at the Forest Court at Stanhope, holden the 5th day of May, amongst other things, to cause the tenants of Weardale to set down their custom, under their hands in writing :

Imprimis. We find and present, that the custom of tenant right used within the forest and parke of Weardale, is, and time out of mind of man hath been, that after the death of any customary tenant dying seized of a tenement, his wife, by the custom, during her widow's estate, is to have her widow-right of the tenement, and after her death *or marriage* then the tenement to descend and come to the eldest son, if the tenant have any son, and through default of a son, to the *eldest daughter*, and through default of daughters to the next of the kin.

Item. We find that it is accustomed, that if the younger brother do agree with the elder brother, in the life-time of the father, for all or any part of the tenement, that

then the agreement shall stand in effect to exclude the elder brother who takes the composition.

Item. We find, that it hath been accustomed, that every customary tenant-within the forest and parke of Weardale, may, at his pleasure, lett, sett, grant, or sell his tenement, or any part thereof, to any person or persons; and after the sale so made of any tenant right, the buyers thereof have used to come in at some court after then kept within the said forest, and to be set tenant, and to pay a take penny or custom penny.

Item. We find, any tenant may, upon his death bed give his tenement to any of his younger sons, *with the consent of the eldest, and not otherwise.*

Item. We find, that the customary tenants within the said forest and park are to pay their yearly rents two times in the year unto the Bishop of Durham for the time being; that is to say, at the Feast of Pentecost, or before Magdalene Day then next, the one half, and at the Feast of Saint

Martin the Bishop in winter, or before Saint Andrew's Day then next, the other half; and through default of payment of the said rent, in manner as is aforesaid, the officer may distrain any such tenant's goods as do not pay the same accordingly, at the days and times aforesaid:

Item. We find, that the said tenants within the said forest and park, in consideration of these customs, have, besides the yearly payment of their rents as aforesaid, to do suit at court two times a-year, and pay yearly, at every foster court next after Easter kept within the said forest, a custom penny, and to do their service unto her majestie upon the borders against Scotland, at such time and times as they shall be thereunto called for the defence of the said borders; that is to say, fourteen days of their own costs and charges, whereof they have two days to go to the said borders, and ten days there to remain, if need so require, and two days to come home again from the said borders.

Item. We find, that the said tenants, from Lammas to Saint Andrew's Day, do yearly,

for the most part, and need requireth, observe both a night and day watching at divers and sundry fords and rakes, for resisting the Scots, and safeguard of themselves and their goods, and also to make their appearance at musters, at frays, and following the thief, and withstanding and repelling the enemy, some with good horses, some with meaner, some on foot; and some have used the said horses on the said borders for their own ease, and others of them have sometimes done their service upon the said borders on their best horse, for their better abilities and their own pleasure.

Item. We find, there is a Slough-hound *, which now is, and heretofore hath been kept and maintained within the said park and forest of Weardale; which said hound, or some other, is to be kept and maintained from time to time, as need requireth.

Item. We find, that within the said park and forest of Weardale, the watches are

* See Skene, Reg. Mag. Auld Lam.

already appointed, according to their use, and as they have been accustomed, and are to be continued as need requireth.

Item. We find, that the tenants of the said forest and park, according to their several rents, are reasonably furnished and provided for her majestie's service, or otherwise, as need requireth, according as heretofore hath been accustomed.

Item. We find, the overplus of horses yearly pastered within the firth, both summer and winter, is a great decay and very hurtful to the game and deer there, for that the said horses have commonly eaten up the most part of the best and smallest grass, whereby the meaner could lesser nurish and feed the said deer, and likewise through the great chasing for taking the said horses, or some of them, in the time of fawning, sundry of the young fawns are thereby overran and killed.

Item. We do likewise find, that the deer hay ought, all and every part of it, to be mowen a week before Magdelan Day, for the

better feeding of the game ; and, likewise, we find the wall about the firth not good, but in decay, and that thereby by sheep comes great anoyance and hurt unto the game.

Item. We find, that master forester hath usually had two horses yearly pastured in the said firth, and every of the keepers do claim a saddle horse yearly within the said firth, and also the officers there do claim that they and every of them, for the *winning* and getting the deer hay, have heretofore had ten shillings, or one horse gate, allowed them within the said firth.

Item. We do likewise find, that within the said firth there belongeth dale of meadow to the master forester, containing fifteen days work or thereabouts. We do likewise find, that George Em'son and Robert Em'son have belonging to them one dale of meadow, containing about sixteen days works.

Item. We do likewise find, that there is belonging to Ralph Trotter the elder, one

dale of meadow, containing about eighteen day works.

Item. The Pallicer hath usually had 13 s. 4 d. as a yearly fee for repairing and making the pails or fence to the said firth belonging, and parcel of ground containing about five days works.

Item. We do not find any to have overplus in stint.

Item. Whereas heretofore divers and sundry intakes have been inclosed, and houses lately builded within the said forest, &c. we find, that the said intakes have been inclosed, and houses builded, by the several owners thereof, without licence, and by and according to the custom within the said forest.

Item. We find, to that master forester belongeth the keeping of the lord's court, two times in the year, and also to him belongeth twenty nobles fee yearly, and also one dale of meadow, containing as aforesaid about fifteen day works, and is called Foster Dale ; and also there is belonging to the

master forester, two horse gates, as is aforesaid, in the firth.

Item. Whereas there was an article given our charges unto us for setting down what belongeth to Mr. Morent, we can have no evidence in effect for the same, whereby we can any way present, therefore we humbly devise and crave respect until the next court for the same.

Item. Whereas we have given in our charge for the maintaining of Slough-hound, so it is that we have had and already have had, and keepers upon the costs and charges of the park and forest only.

Now there is sundry that would withdraw themselves from bearing and maintaining the said Slough-hound, and some of them do deny any payment for the maintenance of the said Slough-hound, the payment is denied by George Emerson, of East Yeat, and of his tenant and man, Leonard Lyttell, of Smallborns.

Therefore, we do humbly crave your

lawful favour that we be not separated, but continue on maintenance in the said Slough-hound, as ever heretofore it hath been used and continued. In testimony of this our deed and act, we have subscribed our names, the 26th day of May, 1601.

No. IV.

Extracts from an Act of Parliament for Confirming Agreements between the Lords of the Manor of Thornbury, in the County of Gloucester, and the customary Tenants or Copyholds of the said Manor. 25 Car. 2. Anno Dom. 1672.

An entail to be barred by recovery.

AND that all estates tail, with or without remainder, of any such copyhold lands and tenements belonging to the said manor, may be barred by common recoveries, to be suffered in the court of the said manor, according to the course of common recoveries to be suffered at the common law, and not otherwise.

The widow to hold her husband's lands during her life.

And likewise that the wife of every *copyholder or customary tenant of inheritance*, after the death of her husband, shall, by the custom of the said manor, hold during her natural life, as customary tenant in dower, all such customary tenements as her said

husband was *at any time seised of during the coverture* between them, (unless she join in the surrender and alienation thereof during the coverture) paying such fine unto the lord of the manor for the time being as is hereinafter appointed *.

And that the husband of every woman copyholder, or customary tenant of *inheritance*, after the death of his wife, *whether he hath issue or no issue* by his wife, is, by the custom of the said manor, to hold such copyhold and customary ten^{ts}. during his natural life, as tenant by the courtesey, except in case of surrender and alienation, as aforesaid, paying such fine as is hereafter expressed.

The husband to hold his wife's lands during his life.

And that no after-taken husband of such customary *tenant in dower*, nor any after-taken wife of such *tenant by the courtesey*, shall enjoy the said customary tenements after the death of such customary tenants in dower, or tenant by the courtesey, but

But not the after taken wife or husband. Such tenant would not have an estate of inheritance, and consequently would not be within the former custom. C. W.

* See my *Gilb.* 473.

the said tenements shall come in possession to the heirs of him or them that right hath, any usage or custom to the contrary notwithstanding.

A widow's claim by surrender, half a year's value for fine.

Upon the admittance of every widow claiming *by surrender*, or as customary tenant in dower, or as joint taker with her husband, or as a *jointress* to any the customary ten^{ts}. of her deceased husband, one half year's full value of such customary tenements, with proportionable deductions, as in case of admittance upon descent, the said fine to be paid within one half year next ensuing such admittance.

And the like if she marries again.

And as often as such widow, being possessed of such estate, shall marry again, the like fine is to be paid (*toties quoties*) within the next half year after such marriage, although there be no admittance.

And the like for a widower.

Upon the admittance of every widower of such copyholder claiming as customary tenant by the courtesey, or as joint-taker with his wife or otherwise, by surrender, to any of the customary lands or tenements, of his deceased wife, one half year's full value of

such customary tenements with proportionable deductions, as in case of admittance by descent; the said fine to be paid within one half year next ensuing such decease.

Provided always, that if any copyholder or customary tenant of inheritance in possession shall surrender his or her copyhold or customary lands or tenements, or any part thereof, to his or her own use for life or in tail, with remainder or remainders over to the wife or husband, child or children, or the next heir of him or her that maketh the surrenders, or to all or any of them, and to no other person or persons, that then no fine or heriot shall be paid for such surrender or re-admittance to the lands so surrendered by the person that makes the surrender*.

Tenant in possession surrendering to himself for life, with remainder to the next heir, no fine to be paid.

Provided always, that if any person or persons having, or which shall have, any reversion or remainder of copyhold lands or tenements, shall surrender his or her reversion or re-

A tenant in reversion making the like surrender no fine to be paid.

* See my *Copyh.* vol. 1. p. [288]. [292].

mainder to his or her own use for life, or in tail, with remainder or remainders over to the husband or wife, child or children, &c. (as in the last article.)

But if the husband die before it fall to him, the wife shall pay one year's value.

Provided also, nevertheless, and it is hereby agreed, that if any person or persons having any remainder or remainders of any copyhold or customary lands or tenements, shall surrender his reversion or remainder to the use of himself for life, with remainder or remainders over to the use of his wife, child, or children, or the next heir, or to all or any of them, and to no other person or persons, then, in such case, if the husband shall die, before such reversion or remainder shall fall to him in possession, that then, in such case, the wife shall pay for her fine upon admittance, after such reversion or remainder shall fall unto her in possession, one full year's value of the customary tenements to which she shall be admitted, with proportionable deductions out of that one year's value, as in case of descent. The said fine to be paid within the year next ensuing such admittance, at two half yearly payments, by even and equal portions.

And as often as such widow, being possessed of such lands and tenements of such estate therein, shall marry again, that then such wife is to pay half a year's value within the next half year after such marriage, although there be no new admittance, any thing herein contained to the contrary in any wise notwithstanding*.

And as often as she shall marry again to pay half a year's value.

Provided also nevertheless, and it is hereby agreed, that if a woman having any reversion or remainder of any copyhold or customary lands or tenements, shall, either by herself or jointly with her husband, surrender her reversion or remainder to the use of herself for life, with remainder or remainders over to her husband, child, children, or next heir, or to all or any of them, and to no other person or persons, that then, in such case, if such wife shall die before such reversion or remainder shall fall unto her in possession, that then such

And so likewise the husband, and as often as he shall marry again, to pay a year's value.

* Qu. Whether these customs, for the wife to pay a fine on marriage, and also on acceding to her freebench, can be supported? C. W.

husband shall pay for his fine, &c. (as in the last proviso.)

But if they live until it fall in possession, they shall pay two year's value.

Provided also, nevertheless, and it is hereby agreed, That if any person or persons having by descent any remainder or remainders of any copyhold or customary lands or tenements, shall surrender his or their reversion or remainder to his, her, or their own use or uses for life or in tail, with remainder or remainders over to the use of the husband, wife, child, children, or next heir of him that maketh the surrender, or to all or any of them, and to no other person or persons, that then, in such case, notwithstanding such surrender, if such reversion or remainder shall fall in possession unto the person or persons making such surrender, shall pay unto the said lord for a fine, two years' value of the customary tenements which shall so fall and come unto him, her, or them in possession, with deductions out of the two years' value, as in case of descent; the said fine to be paid within two years next after such reversion or remainder shall fall unto him, her, or them in possession, at four half yearly payments, by even and equal portions.

Provided also, and it is hereby further agreed, that no person or persons to whose use any remainder or remainders is or are surrendered, shall pay any fine or fines unto the lord or lords of the said manor for the surrender of or admittance to any such remainder or remainders, until after such remainder or remainders shall fall unto him, her or them, and that then such person and persons in remainder, being the child, children, or next heir of the person surrendering, shall pay for a fine two years' full value of such customary tenements, with such deductions, &c. as upon fines upon descent, any thing herein contained to the contrary thereof notwithstanding.

Parties to whom the surrender is made to pay no fine.

And, that all and every widow and widows, not being married, who is and ought to be admitted tenant or tenants to any customary lands or tenements of the said manor, not having paid or compounded as aforesaid, shall pay half a year's full value of all such customary lands and tenements as she doth hold, enjoy, or is admitted tenant unto; the said fine to be paid within three months afore mentioned: such remedy, ways, and means

in all things shall be taken, for the recovery of the said fine, as is before agreed in the case of fines of widows after the decease of their said husbands.

Provided always, that every widow that hath married, or shall marry, before an act of Parliament shall be passed for confirmation of these presents, without leave of the lord of the said manor, by which marriage, according to the former custom of the manor, she or they ought to forfeit their said customary lands and tenements, she, they, or her and their husband or husbands shall pay unto the lord of the said manor two years' full value of all such customary lands and tenements as she, and they, and their said second husband do hold and enjoy, or were admitted unto, in right of their said wives, with deductions as aforesaid.

The first payment of which fine shall be within three months before mentioned, and so every succeeding half year, after the said three months, one full fourth part of the said fine, until the said fine shall be fully paid. And that the lord, by his bailiff or

other officer, shall have and take in all things, such remedy, ways, and means for the recovery of the same fine or fines, by way of distraining upon the said lands and tenements, and selling the distress; and the lord to hold all the said lands and tenements so long for want of distress to be found thereupon, as in the case of fines upon descent or surrender, as is before agreed.

Provided always, that the husband of every customary tenant in dower, and the wife of every customary tenant by the courtesey, who is or shall be married to such tenant in dower, or by the courtesey, before these presents shall be confirmed by an act of Parliament, and surviving his wife or her husband shall hold the said customary lands and tenements, which said customary tenant in dower, or by the courtesy, holdeth or shall hold, so long as he or she continue unmarried, according to the old and ancient custom of the said manor, any thing in these presents to the contrary thereof notwithstanding.

It is also agreed, that the executors and administrators of any copyholder or customary

tenant, shall have, hold, and enjoy the customary or copyhold lands and tenements of which such copyholder or customary tenant shall die possessed, (plain mead and fallow excepted,) for the space of one month next after the death of such customary tenant, and no longer*.

And it is hereby further agreed, that it shall and may be lawful to and for any lord or lords of the said manor to grant any of his or their demesne lands or tenements unto any person or persons whatsoever, by copy of court roll, for life or lives, in fee simple or fee tail, according to the custom of the said manor, any usage or custom to the contrary thereof notwithstanding†.

* See my *Gillb.* 320. and *post.* *Cust. of Berkeley.*

† See my *Copyh.* 36.

No. V.

CUSTOMS OF THE MANOR OF MAYFIELD,
IN THE COUNTY OF SUSSEX.

FIRST, that the beadle shall present all alienations made of copyhold, during his beadlewick ; if he do not, and know of it, he shall be amerced : if the said alienations be hid by the buyers or sellers, the lord may seize, and then the buyer thereof shall make ffine according to the default*.

2dly. Also, the beadle hath authority to take the surrender of all copyhold lands within his beadlewick, of every tenant lying in extreams†, so that he present it at the next court after the death of the tenant, or else to stand void.

3dly. Also, the beadle hath authority to

* *Vid. post. Cust. of Framfield, Art. 3.*

† *My Copyh. [68]. [77]. Post. Cust. of Framf. Art. 4.*

present, if any tenant make lease of yard lands by indenture, without licence from the lord ; if any so do after presentment thereof made, the steward shall give warning by *scire ffac.* to the party, to shew why his lands ought not to be seized. And he shall make fine to the lord according to conscience, after the manner of his offence *.

4thly. Also, the tenants within the said manor may make lease by indenture of their serte lands, for term of years, without licence of the lord †.

5th. Also, the beadle is bound to answer for all herriotts, amerciaments, waifs, straies, and other profits of the court, and to levy all manner of rents leviabie, both free and copy, within his beadlewick, and shall be allowed for the lands that are in the lord's hands, and yield a true account at his auditt ‡.

* *Vid. post. Cust. of Framf. Art. 5.*

† *Ibid. Art. 6 & 7.*

‡ *Ibid. Art. 9.*

6th. Also, the beadle is bound to levy and make payment of the rents and revenues, within his beadlewick, to the receiver and auditor within the lordship of Southmallings; and if he die or go away before the auditt, whereby the lord is unpaid, and no man for that year is chosen that will take the charge of the said accompt, then it shall be lawful for the lord to distreine all the whole homage for the said accompt to be made, and the lands for which the accompt ought to be made to be seized, and to be delivered to the homage for their discharge of the said office *.

7th. Also, when the beadle is entered into the auditt to make his accompt, then the homage is discharged for the same accompt.

8th. Also, if any tenant, being sole, seized of copyhold lands, demise himself, and remaineth no tenant†, then the lord shall

* See *post*. *Cust. of Framf.* Art. 9, &c.

† *Kitch.* 133. a. & b. 134. b. 135. b. *My Copyh.* vol. 2. Of Heriots. *Cust. of Framf.* Art. 11.

have a harriott, as well by the dismissal as by his death.

9th. Also, if any tenant be distreined by any of the beadles, for any rent, service, or custom, the which the tenant denieth to be due, he may have a replevin of the steward or his deputy, finding surety of his plea and of his return, if it pass against him according to the law*.

10th. Also, if any tenant in all the beadlewick, three, two, or one of them, die seized of any lands herriotable, or make their demise, then the said tenant shall pay but one herriot for all the same tenure†.

11th. Also, if any tenant do offend the lord or lords in any trespasses, then he to make fine to the lord or lords, after the quantity of the trespass, according to the law, without any seizure of his lands or any part or parcel thereof‡.

* *Cust. of Framf.* Art. 12.

† See *Kitch.* 134. a. and my *Copyh.* vol. 2. Of Heriots. *Cust. of Framf.* Art. 20.

‡ *Cust. of Framf.* Art. 13.

12th. Also, that every tenant may common in the lord's soyle all manner of cattle that he breedeth forth upon his tenure, after the rate of the same tenure, and to pay nothing for them, except only for swine and hogs, for the which he payeth every full maste year for every swine ii^d. y^t. is of the age of xii. months, and above, at the ffeast of Saint Peter Ad vincula, that same year, and every hogg under that age ffarrowed afore the said ffeast i^d. and if it be no full maste year, then to pay for every swine aforesaid i^d. and for every hogg aforesaid one halfpenny*.

13th. Also, the lord may keep and assign his Airs Court at his pleasure, any time after the ffeast of All Saints, at a place assigned within the beadlewick, by himself, at which place the tenants ought to have due warning to be at it, and there to do his diligence; and the steward, or his deputy there, to write the names and surnames, and the number of every man's hoggs, and the

* *Cust. of Framf. Art. 14.*

† *Ibid. Art. 15.*

beadle to return the money thereof; and such persons as airs not truly to the quest of pannage to be presented, and then the steward shall make process against them to appear at the next court, and there to swear them upon a book, to tell themselves how many hoggs they have, and then to pay after the rate that year for swine.

14th. Also, the beadle shall purvey for the steward's dinner, and the ranger and other deputies and servants, and pay also for the dinner of the xii. men of pannagers, and thereof to be allowed at his auditt, and of all the remnant to answer the lord at his auditt or accompt.

15th. Also, that no tenant in the beadlewick of Mayfield and Framfield, holding any copyhold within the said beadlewick, is not appeachable of any waste done or to be done.

16th. Also, all yard-lands shall pay his rent of assise †, as it appears in the Black Book,

* See *Cust. of Framf.* Art. 16.

† *Ibid.* Art. 19.

at the taking of the yard, and for the work and custom of the mannor of Stowham, lett out as it appeareth in the lord's record of the same, and every acre and every yard by himself pay, and be chargeable like and no more within the said yard.

17th. Also, every such yard or half-yard that is chosen to do the service of the beadle-wick, the tenants of the same yard shall pay none airs the same year for their hoggs or swine, and the wood-lookers shall have the same advantage*.

18th. Also, the trees† that fall in the lord's wood, that bring up any earth with the root, the rangers shall have them, and all trees and boughs that fall otherwise, the ranger of the lord's wood shall have them, so it be more than a load; and all the small boughs, that fall in the lord's woods, that be a load or under, the wood-lookers shall have for their fee.

* See *Cust. of Framf.* Art. 17.

† *Ibid.* Art. 16.

19th. Also, if any man or woman be first admitted tenant of any of the assart lands*, and die seized of assart or bond lands, that then his oldest son shall be admitted for heir; and if he or she have no son, if he or she have a daughter, likewise, and the said man or woman first be tenant of bond lands (that is to say,) yard lands, then the youngest son shall be admitted to the said bond lands and assart, and if there be no son, the youngest daughter likewise.

20th. Also, that yard lands shall relief after his rent of assize, as it was taken†, as it appeareth in the black book.

21st. Also, that no share lands shall herriott no relief, but yearly pay his share according to the first taking of their lands‡, and that no freehold shall herriott, ne relief, nor suit of court, but yearly pay his rent.

* See 1 Leon. 56. Kemp & Carter. And see Fitzh. Abr. Prescript. 57. & Cust. of Framf. Art. 18.

† Cust. of Framf. Art. 19.

‡ Ibid. Art. 19.

22nd. Also, that no bond-holder shall sue any other bond-holder out of the lord's court, without licence of the steward, which the steward may determine; also, that no matter that p'taineth to copyhold shall be determined out of the same court *.

23rd. Also, all tenants shall have marl and earth for dowbinge and gravel in the lord's soil, as they shall have need, about their lands and tenements within the said lordship †.

24th. Also, that they may lay their dung, and sullage of their houses, in the lord's soil, as they shall need, to amend their lands within the said lordship, so that it be to no man's annoyance ‡.

25th. Also, they may make ffeoffees in all their lands of copyhold, as well of bond as assert lands, by reasonable ffine and reliefe,

* *Cust. of Framf.* Art. 24.

† See my *Copyh.* vol. 1. p. [333]. & *Cust. of Framf.* Art. 23.

‡ *Cust. of Framf.* Art. 25.

and afterwards make their will of them, and dispose of them after their last will *.

26th. Also, that no officer of the lord's may make sale of lands or trees in the lord's soil or common †, to the annoyance of any tenant which of old time have been suffered and thought necessary, except it be by consent of the tenant next adjoining, and so to make his ffine, and be admitted by the steward to enjoy the same for ever.

27th. Also, every tenant may make sties for their hoggs in the common there, as is most necessary, as they have been used to do ‡.

28th. Also, for as much as every tenant is bound to keep closure against the lord's common or soil, the said tenants may take tinnett § growing in the said common or soil,

* *Cust. of Framf.* Art. 22.

† See *Ibid.* Art. 32.

‡ *Ibid.* Art. 26.

§ From the Saxon, *ryn*an, to enclose. See the *Saxon Dict. & Cowell* voc. *Tinettum*, also *Jac. Dict.* voc. *Tinet.* *Fort. on Mon.* 57. N.

for the making of the said closures, if the said tenants lack of their own *.

29th. Also, if any man sue for a yard of land, if the tenant of the same (appear, qu'.) every court day in a year, the same man shall excuse all the land-holders of the same yard ; and if none of the yard sue, that then the tenants of the same yard to pay xii^d for the suit of the year †.

30th. Also, no yard that ever was charged of right to do the service of any of the beadlewick, that can be free of the services, except the homage of the same beadlewick be contented, and agree to the same ‡.

31st. Also, that the court rolls of the said lordship ought to be within the lordship of Southmallig, to which the said beadlewick p'taineth indifferent between the lord and his tenant ; and if any tenant lack his evidence, the said tenant to sue to the steward to search

* See *Cust. of Framf.* Art. 23.

† *Ibid.* Art. 27.

‡ *Ibid.* Art. 28.

for his evidence, paying for his search according to conscience ; and if he sue within the year for his copy, that he is admitted to pay but iiii^d. for it.

32nd. Also, the rodd that be purchased out of the lord's woods and soil should be xviii foot and a half.

33rd. Also, if any man die seized in yardland, his wife shall have it during her widowhood, and after to remain to the next heir after the custom *.

34th. Also, if any tenant be seized in assart lands, his wife shall have, during her life, the third ffoot, and after to remain to the next heir by custom †.

* See *Cust. of Framf.* Art. 29.

† See *Ibid.* Art. 30.

<i>Richard Stapley.</i>	<i>Joyn Younge.</i>
<i>William Delve.</i>	<i>Richard Brackprice.</i>
<i>Thomas Delve.</i>	<i>John Brook.</i>
<i>Robert Mansir.</i>	<i>William Dallington.</i>
<i>Thomas Comber.</i>	<i>Thomas Smith.</i>
<i>Robert Martin.</i>	<i>John Wigsell.</i>
<i>William Smith.</i>	<i>John Olliffe.</i>
<i>Robert Meyre.</i>	<i>John Russell.</i>
<i>John Snate.</i>	<i>John Swane.</i>

These were the names of those that were of the homage, and made presentment of the customs of the manor as it is above.

No. VI.

CUSTOMS OF THE MANOR OF FRAMFIELD,
IN THE COUNTY OF SUSSEX.

THIS indenture, made the 30th day of July, in the year of the reign of our Lord James, by the grace of God, of England, France, and Ireland, king, defender of the faith, &c. 19th of Scotland; between the Right Honourable Richard, Earl of Dorset, Lord of the Manor of Framfield, in the County of Sussex, of the one part, and Nicholas Eversfield, Esq. George Smith, Esq. John French, and Magnus Byne, gents. tenants of the said manor or beadlewick, of the other part. Whereas, heretofore, some doubts and questions hath been made by the said earl, concerning the customs and usage of the said manor, and enjoyed by the said tenants. For the better determining that doubt, and better satisfaction of the said Earl of Dorset, in that behalf, the said Nicholas Eversfield, George Smith, John French, and Magnus Byne, did agree, and by the consents of all the other tenants of the said manor, that a

survey or search made in all the antient court rolls and customs, might be taken for the explanation of the said customs and usages, whereunto the said earl condescended, and it was agreed, on both sides, that all right and custom should stand in the same manner as they are hereinafter agreed to be written.

1st. That the steward or his deputy may take surrender of any customary lands or tenements out of court, and it shall be good so it be recorded in the court rolls within one year * next after the taking thereof.

2ndly. That the beadle shall serve the courts, and execute truly all warrants and precepts to him directed by the steward or under steward, and thereupon to make a true account at the next court day.

3dly. That the beadle shall present all alienations of copyhold made during the time of his office, or in the year before ;

* See my *Copyh.* vol. 1. p. [84]. & see *post.* Art. 4.

and if the said beadle do not present it, then he to be amerced, if he do know of it, and the said alienation be hid or concealed by the buyer or seller of the said lands and tenements, then the lord of the manor may seize it into his hands, and then the buyer or seller there to make fine to the lord, according to his faults*.

4thly. That the beadle, or his lawful deputy, hath authority to take surrender, with the record of the tenants, of all copyhold lands and tenements within the said manor or beadlery, of any tenant lyeing in extreame, so that the same be presented at the next court after the death of the tenant, or else to stand void †.

5thly. That the beadle hath authority to present, if any man make lease of yard lands, viz. bond lands by indenture for term of years, without licence of the lord or his steward, if any person shall so do, then after presentation thereof made, the steward to

* See before *Cust. of Mayfield*, Art. 1.

† *Ibid.* Art. 2. & see *ante*, Art. 1.

make *scire facias* for the party to show why his land should not be seized, and to make fine to the lord according to conscience *,

6thly. That every tenant that is seized of bond lands, or yard lands, within the said manor or beadlewick, shall and may, by licence of the lord of the said manor, or his steward for the time being, lett the same for the term of seven years, and to pay one relief for such licence †, by way of fine, after the old rent of assize ; and if it be otherwise letten, the lord to seize the lands, and the tenant to pay fine for his forfeiture thereof, and to be readmitted again.

7thly. That all the tenants, within the said manor or beadlewick, may lett their assert lands and tenements, as well old and middle, as new assert, for the term of sixteen years, without licence ‡, and not above ; and every such lease to be brought and proved

* See *Cust. of Mayfield*, Art. 3.

† *My Copyh.* vol. 1. p. [322].

‡ *Cust. of Mayfield*, Art. 4.

at the court, within one year next after the making thereof, and to be entered into the court books or rolls, without paying for such entry, or also every such lease to be void.

8thly. That the beadle hath authority to present all manor things that the homage should present at the death of every tenant, and to seize the best beast, that shall befall to the lord, after the death of such tenant, by way of a heriot to the lord's use.

9thly. That the beadle is bound, by virtue of his office, to levy and pay for all herriotts, amerciaments, and profitts of the courts, and to make levy of all manner of rents, as well free as copyholds, that be leivable, and the same to be paid by the beadle in manner following, *viz.* at the Feast of the Annunciation of our blessed Virgin Mary, or within forty days next after, the sum of forty pounds, and the Feast of St. Michael the Archangel, or within forty days after, to pay the full residue of all the rents and other duties due to the lord for the year last past, and, therefore, to yield to the lord, or his officer, a due and just account for gathering

the rents of the asserts, and for the freehold to be allowed sixteen shillings and eight pence yearly, of the lord, and no more ; and the beadle, by virtue of his office, is bound to levy and make payment of all rents and revenues of the said manor or beedlewick, every one by himself, for the year he is chose, and to make payment to the receiver or auditor of the lord of the said manor of Framfield *.

10thly. That if the said beadle die or go away before the auditt, whereby the lord is unpaid, and a man, for that year, is chosen, that will take the charge of the said accounts, that then it shall be lawfull for the lord of the said manor or beadlewick, to distreine all the whole homage for the said accounts, to be made, and the lands so chosen for the said charge, to be seized and delivered to the homage for the discharge of the said office.

11thly. That if any tenant, within the

* *Cust. of Mayfield*, Art. 5. & 6.

said manor or beadlewick, be sole seized of any copyhold, and do demise himself thereof by surrender, not reserving to himself one entire tenancy, or four acres of land, if he have so many within the said manor; then, upon such surrender, the lord shall have his best beast for a herriott, as well after his dismission, as by his dyeing seized*, and the beadle is to seize the said herriott, and to deliver him to the lord's steward.

12thly. That if any tenant be distrained by the beadle for any rents service, or rents custom, that the said tenant sayeth is not truly due, then he shall sue to the steward, or his deputy, for a replevin, to be had for his distress, finding sureties for his plea, and for return to be had, if the law be deemed against him †.

13th. That if any tenant offend the lord in any trespass, he is to make fine to the lord,

* *Ante, Cust. of Mayf. Art. 8.*

† *Ibid. Art. 9.*

after the quantity of his trespass, without seizure of his lands, or any parcel thereof*, as shall be deemed or rated by the steward, or under steward, and officer of the court.

14th. That every tenant may common on the lord's wast of the manor or beadlewick, with all manner of cattle he breedeth upon his tenure, and to pay nothing for them, but only for swine or hoggs, for the which for every full mast year, if trees shall be there, he shall pay for every swine twopence, of the age of twelve months, on or about the Feast of St. Peter ad vincula the same year, and for every hog under that age, farrowed before the said feast, to pay one penny; and, if it be not a full mast year, then to pay for every swine but one penny, and every hog but one halfpenny†.

15th. That every year the lord may assign and keep his Aires Court, at his will and pleasure, at any time before the Feast of All Saints, at a place to be assigned

* *Cust. of Mayfield, Art. 11.*

† *Ibid. Art. 12.*

within the said manor or beadlewick, at which place all the tenants to have due warning, and be at it, and there the beadle to do his diligence, and the steward, or his deputy, to write the names and the surnames of the tenants, and the parcell of the hoggs and swine, and the beadle to receive the money thereof, and all such persons as airs not truly to the inquest of pannage to be presented, and then the steward to make out process against them to appear at the next court, and there to swear them upon a book to tell how many swine and hoggs they have, and then to pay after the rate of that year for their swine and hoggs*.

16th. That no copyhold tenant, within the said manor, is impeachable or purnishable of or for any manner of wast done upon any of their copyhold lands or tenements inclosed, or to be inclosed†, but that every such copyhold tenant may, at their free wills and pleasures fell down, convert, and dispose of it to their own use, all the woods, trees, and timber upon their copy-

* *Cust. of Mayfield*, Art. 13.

† *Ibid.* Art. 15. & see 18.

holds, and that the said tenants may likewise, at their own will and pleasures, draw, take, and dig, and convert to their own use, all iron-mine, or oar and stone, lying and being within their copyhold lands and tenements.

17th. That every yard or half yard land that is chosen to the office of a beadle, the tenants of the same yard or half yard so chosen, shall pay no airs, for the same year, for their swine or hogs*.

18th. That if any man or woman be first admitted tenant to any of the assert, and die seized of assert lands and bond lands, then the custom is, that the eldest son shall be admitted to all; and if he or she have no son, then the eldest daughter; and if the tenant, be it man or woman, be first admitted to bond lands, that is to say, yard lands, then the youngest son or daughter shall be heir to all his customary lands†; and the like is to be observed for brothers and sisters, uncles

* *Cust. of Mayf.* Art. 17.

† *Ibid.* Art. 19.

and aunts, and cousins, if there be neither son or daughter.

19th. That every yard land relief after his old rent of assize, as it was first taken, viz. 8s. 4d. for every yard, and no more, and that share lands, share neither herriott nor relief, but yearly pay his share *.

20th. That if any tenant, within the said manor, shall die seized of an estate of inheritance in any freehold lands, or tenement only, then after his death the lord shall have a herriott; and if any tenant shall die seized of an estate of inheritance, both in freehold and copyhold [lands], or tenements how many soever, he shall seize for the lord but one herriott for all †, and that a relief, after the death of every tenant, shall be paid as well of freehold as copyhold lands.

21st. That if any tenant die seized of one or of divers bond tenements or lands, then the heir by custom shall pay his relief for

* See *Cust. of Mayf.* Art. 16. 20. 21.

† *Ibid.* Art. 10.

every yard of lands, one year's rent, and no more than 8s. 4d. for every acre, more or less, after the same rate; so likewise for every acre, more or less, of assart lands, viz. old assart, one penny; middle assart, twopenny; and new assart, fourpence.

22nd. That upon every surrender or alienation of any kind of copyholds or customary land, there shall be paid, upon admittance of the tenant to the same, five years lord's rent of assize, in the name of a fine, and also a relief*, and also that every tenant may from time to time alienate, and enfeof by surrender their customary lands to any use or uses, as of old time they have done, paying a fine and a relief, as is above mentioned †, and the heir of every copyhold dying seized of any assart, or any other customary lands, shall pay for his admittance a relief, viz. a year's rent to the lord and no more.

* See my *Gilb.* 478.

† *Cust. of Mayf.* Art. 25.

23rd. That all tenants of the said manor or beadlewick, may have, take, and dig, draw, take, and carry away, in and from and upon the said commons or wast, stones, gravell, land, loam, clay, bushes, brakes, and marle, for the bottoming and mending any of their lands, and making and mending their buildings respectively, and mending their inclosures against the commons, being hereditaments, holden of the said manor or beadlewick without doing any manner of wilfull spoil to any of the lord's timber or underwoods, or any part thereof*.

24th. That no bondholder or copyholder shall sue any other bondholder or copyholder out of the lord's court, without licence of the lord or his steward, which the steward may determine, and that no matters that concern or belong to the copyholders shall be determined out of the same court†.

25th. That the tenants may lay dung or

* *Cust. of Mayf.* Art. 23. & 28.

† *Ibid.* Art. 22.

soil of their houses in the lord's wast, as they shall need, to mend their lands, within the said manor or beadlewick, so that it be to no man's annoyance *.

26th. That any tenant may make sties, with brakes or turfs, and with no other stuff of the lord's, for their hogs and swine to lye in where it is necessary †.

27th. That if any man make suit to the court, every court in the year, for yard lands, if he be tenant of the same yard, the same shall excuse all the copyholders of the same yard for that year; and if none of the same yard sue, then the tenants of the same yard are to pay 12 *d.* for the suit of the same yard ‡.

28th. That no yard, that ever was charged of right to do the service of the said beadlewick, can be free of the service, except the lord please, and the homage be content and

* *Cust. of Mayf.* Art. 24.

† *Ibid.* Art. 27.

‡ *Ibid.* Art. 29.

agree to the same *, having the lord's favour, and by licence thereunto.

29th. That if any man die seized of yard lands, his wife shall have it whilst she is a widow, if she have no jointure, otherwise she not to have it, but after to the next heir by custom †.

30th. That if any tenant in the time of his life, be sole seized in assart lands, his wife shall have it after his decease, during her life; the third part thereof for her dowry, if she have no jointure, otherwise not to have it; and after to remain to the next heir to have it by custom ‡.

31st. That if any tenant or person be desirous to purchase or inclose any of the lord's wast §, the same tenant is to stake or bound out the same, by the consent of the next adjoining tenant and the homage

* *Cust. of Mayf.* Art. 30.

† *Ibid.* Art. 33.

‡ *Ibid.* Art. 34.

§ See my *Copyh.* vol. 1. p. [33], &c.

of the next pannage court to present the same, and to grant and agree thereunto, that the lord by his steward may grant the same parcell of wast ground to such parties or heirs, he or she agreeing with the lord for his or their fine thereof; and the said tenant, or other person to whom any such land shall be granted, to him and his heirs, according to the custom of the said manor or beadlewick, doeing such service and paying for new assert lands, 4*d.* for every acre, middle assert 2*d.* old assert 1*d.* and paying such fine, herriott, and relief, as the tenants are accustomed to pay.

32nd. And, lastly, that the right and interest of all the woods, timber, and underwoods, growing or to grow in and upon the commons or wast of the said manor or beadlewick, do appertain and belong unto the lord of the said manor or beadlewick *, and also all mines and quarries of stone.

* See *Cust. of Mayf.* Art. 26.

THE CUSTOMS FOR RELIEFS AND FINES :

Reliefs for old assert is $1d.$ per acre.

Fine for old assert is $6d.$ per acre.

Relief for middle assert is $2d.$ per acre.

Fine for the same is $12d.$ per acre.

Relief for new assert is $4d.$ per acre.

Fine for the same is $2s.$ per acre.

The fines and relief for bond or yard lands, are so much per acre, according to the number of acres.

The yard of vile pays relief $1\frac{1}{2}d.$ per acre, and quit rent is $2\frac{3}{4}d.$ per acre, and so for all yards and lands.

No. VII.

CUSTOMS OF THE MANOR OF BERKELEY,
IN THE COUNTY OF GLOCESTER.

THE customary or copyhold customs of the manor of Berkeley, and of the several branches or sub-manors, viz. Ham, Alkington, Hinton, Slimbridge, Hurst, Sages, Cam, Cowley, Canonbury, Wotton, Forren, Arlingham, Berkeley, and Wotten Burroughs, as the same have been, at several courts holden for the manor of Berkeley, presented to be antient customs therein, especially in July, 40th Elizabeth, by 92, and after by 104, and last of all by 112, of the most able customary tenants thereof, drawn together for that purpose, as followeth :

1st. *Imprimis.* That estates may be granted of any copyhold messuages or lands, for three lives or under ; and that the wife of every such copyhold tenant dyeing seized and in possession, shall, after the decease of her husband, hold the same so long as she shall live chaste and unmarried, and that

As to widow-
hoods and
herriotts.

for such lands as are herriotable, the best quick beast that the tenant hath at his death, shall be paid the lord for an herriott; and if such tenant have no quick beast, then the best good which he hath shall be paid for the herriott.

Lord can
grant three
lives.

2nd. *Item.* That the lord of the manor for the time being, being seized of any estate of inheritance or freehold thereof, may grant estates in reversion at his pleasure, to any person or persons, not exceeding three lives, to begin after the expiration of the former copy in being*, and that the same are good by the custom against those who shall have any estate afterwards in the manor.

Wast to be
presented by
homage and
amerced.

3rd. *Item.* That if there be any default of reparations in any messuage or house, or if any spoil or wast be done upon the same, that it ought to be presented by the homage at the next court, and such tenant to be amerced for the same from time to time, till it be repaired and amended; and

* See my *Copyh.* vol. i. p. 89.

that if any default of reparation be, and the same not presented by the homage, whereby the same falleth into decay or becometh ruinous, that then the customary tenants of that manor shall repair the same at their own costs and charges, and that if any customary tenant fell or cut down any wood or timber, and by himself or his executors carry it away or sell the same from off the land, he shall therefore be amerced treble damages.

If not presented, homage to repair.

4th. *Item.* That all the copyholders may take upon theyer several tenements, at all seasonable times, house bote, hedge boote, plough boote, and fire boote, without wast making; and if any wast be committed, they shall be amerced for the same by homage.

Tenants to take booties without wast.

5th. *Item.* That any customary or copyhold tenant for two or three lives, being the first taker, may surrender into the hands of the lord or of the steward for the time being, or otherwise sell his estate*, and then

First taker may surrender or sell.

* See my *Gill.* 445. No. cxxii.

the second life and third life shall be utterly void upon any such surrender, or upon such sale being found a forfeiture, neither in such case availeth it, whether the second or third life paid all or any part of the lord's fine or not.

May surrender by letter of attorney.

6th. *Item.* That any copyholder, holding in his own right, may, by his letter of attorney under his hand and seal, and delivered as his deed, surrender and deliver up into the hands of the lord, by the hands of the steward for the time being, all or any part of such lands or tenements as he so holdeth, and the same surrender to be as good to all intents and purposes, as though such surrender had been made by the customary tenant in person, in open court, there personally present*.

Copy to tenant and A. his wife, intitles her to widowhood only.

7th. *Item.* The custom is, that if any man take of the lord, by copy of court-roll, any lands or tenements, for term of three lives or under, in manner following, that is,—to

* See my *Copyh.* vol. i. p. [65], &c.

himself, *A.* his wife, and *B.* his child, or to any other person, (he being then married to his wife,) in this case, the wife shall have but the widow's estate, and not her life, after her husband's decease, though she be named in the copy by her christian name. But if she be named in such copy before her husband, that then she shall have the same for her life, though she do marry afterwards.

8th. *Item.* If any customary tenant die after the Feast of St. Michael the Arch-Angel, it shall be lawful for his executors or administrators to hold all such messuages and lands, which he held, until the Feast of the Annunciation of our Lady, then next following, and then the next life or taker to take to it, paying for the seeds and one earth, if any of the land be sowed or plowed* ; but the same next life or taker may, before the said Annunciation, fallow the arable land for barley, and sow beans and pease, and the said executors and administrators shall pay

As to receipt of profits on death of tenant by next life.

* *Ante, Cust. of Thornbury; & my Gilb. 320.*

the lord's rent for the whole half year then ending.

9th. *Item.* If any customary tenant dye after the Feast of the Annunciation of our Lady, it shall be lawful for his executors or administrators to hold such messuages and lands, which he held, until Michaelmas day then next following; the same executors and administrators, permitting the next life or taker to enter and take the meadow, and fallow and the same to occupy to his use, according to his estate then in being, and the said executor or administrator to pay the lord's rent, for the whole half year then ending; and that (by the custom) is to be repeated for meadow, that hath most usually been sowed for fifty years, then last past. But if, upon such tenant's death, the same do fall in hand to the lord, then no executor or administrator is to hold the same at all, but the lord peaceably to enter.

The like by
the lord.

To sell with-
out licence a
forfeiture by
tenant in pos-
session.

10th. *Item.* If the first life or name named in the copy, shall or do sell his or her estate by word or writing, without licence from the lord or his steward, he or she shall forfeit his or her and all the rest of the

estates mentioned in the said copy, unless it be a woman under covert baron, but no other life named in the copy shall forfeit thereby but his own estate only.

11th. *Item.* If any person having a reversion-copy for two or three lives, do sell or grant over the same to any person by parol or writing without licence, if such person were the first life named in such reversion-copy, commonly called the taker, the same by the custom is a forfeiture of the rest of the lives named in such copy, and also of their wives widow's estates.

The like by
tenant in
reversion.

12th. *Item.* By the custom of the manor any copyholder may, by word or writing, let his copyhold lands for three years, so that the same be one day in each year actually in his hands and occupation, and during such time may dwell from off the same. But to let or sett the same in any other sort without licence is a forfeiture of his estate.

Copyhold
tenant may
let for three
years.

13th. *Item.* The custom is that if any customary tenant dye, and herriott be paid after his death, and if before entry or admit-

Herriott due
on death of
tenant dying
before admit-
tance.

tance of the next life, that by the copy is to hold the same, the said next life also decease, that herriott notwithstanding shall be paid, and that the widow of such tenant so dead before entry or admittance, shall have her widow's estate, and the herriott to be paid if she also should decease before admittance.

Steward to
commit the
custody of
the body and
lands of infant
tenant in
open court.

14th. *Item.* The custom is, that if any copyholder dye seized of any copyhold lands or tenements, the next life which by the copy is to have the same, being within one and twenty years, and unmarried, that the lord, by his steward, shall commit the custody of the body* and of such customary lands, until the infant (male or female) come to the age of twenty-one years†, at such rate, as in the discretion of the steward to the infant's use, shall seem fitting, and such committee not to be further answerable to the infant, than the rent and conditions agreed upon in open court.

* See my *Gilb.* 329.

† See my *Gilb.* n. 1. & p. 463.

15th. *Item.* The custom is, that if a cow happen to be an herriott, which hath a calf, or mare that hath a foal, or an ewe that hath a lamb, or a sowe that hath piggs, That such young shall go with the dam for herriot, and be as parcel of her, so long as they are unweaned and unsevered from the dam.

If cow with calf, &c. herriott, calf to go with the cow, &c.
See *Plowd. Queries*, Qu. 64.

16th. *Item.* The custom is, that if any customary tenant dye seized of any customary lands which suffice for the breeding of an horse-beast or other beast, having no such beast of his own at the time of his death, that either the best beast of his under tenant occupying the land *, or the value of such an herriott out of the tenants estate, or from the next in remainder, as the case requireth, shall be paid for an herriott; than which no one point of custom hath more often happened.

If copyhold tenement sufficient to breed horses, &c. and tenant hath none for herriott, lord to have best beast of under tenant, or its value, for herriott.

17th. *Item.* The custom is, that if upon the death of any customary tenant in possession, claim be not made by the next in

On death of tenant, if next taker does not claim at third court, barred

* See *Dyer*, 199. b. and *qu.*

remainder or reversion, or by the widow for her freebench or widow's estate, within three general courts next following, such party, after proclamations made at such courts, is barred by the custom, unless such party be an infant, feme covert, in prison, of non sane memory, or beyond the seas in the king's service.

If tenant on his death-bed marry, his widow not to have her freebench.

18th. *Item.* The custom is, that if any man lying upon his death-bed, or in time of extreame sickness, when death followeth, where true ends of holy wedlock cannot be intended to be, shall take a wife and dye, that such widow, wife, or woman shall have no freebench or widow's estate as presumed, also not to stand with the first institution of the custom, with the ordinance of God, or the honour of religion.

A lease for years granted by tenant by licence, shall bind his widow. See *Gill. Ten.* 321.

19th. *Item.* The custom is, that a lease for years made by any customary tenant by licence, reserving a rent, is good against his widow during the term, and *she only to have the rent*; for if such customary tenant may by licence of the lord surrender, and so altogether barr his widow, which is the greater, he may by like licence of the lord make such a

lease, which to do is lesser then to surrender away his whole estate altogether, neither can the wife, by the death of her husband, have from him a greater interest then what was in him at the time of his death, *which was the rent reserved and the possibility of surviving the term.*

20th. *Item.* The custom is, that neither the executor nor the administrator of a customary tenant may, after his death, sell or withdraw the dung or soil that was at his death upon the ground, nor timber, tallet poles, or the like, that were felled for the repair or use of the houses, but to remain for the usage of the next life, for the act of God in the tenants death, shall not prejudice any man, either the lord of the manor or the next life in remainder or reversion; for the copyholder had such things only to the use of his tenement; and if he could not by the custom have sold them away in his life-time, his executors or administrators cannot after his death, for they can have from the dead no greater power or interest after his death, than what was in him at his death.

Representative of tenant. cannot remove dung or timber, &c.

Copyholder
to dwell on
his estate, or
a forfeiture
after three
proclamations.

21st. *Item.* The custom is, that if any copyholder shall not dwell upon his copyhold house, or having for some time dwelled there-upon, shall recede or go from the same and dwell out of the manor, that the same is a forfeiture of his estate after publick proclamations at three courts made for his return.

Widow, or 2d
or 3d life, may
waive payment
of herriott by
not taking the
profits.

22nd. *Item.* By the custom the widow of a copyhold tenant may immediately after her husband's death waive or forsake her widow's estate, and so pay no herriott*, but if she once take the profits it is otherwise, though but for a short time, and having once taken away profit, though she dye before the next court or her admittance, yet *she shall pay herriott*, and the like custom for payment of herriott is for the second and third life in the copy, though such person die before admittance in court.

If copyhold
not repaired,
next taker to
repair; but if
it falls to the
lord unpre-
sented, the
homage to
repair.

23rd. *Item.* The custom is, that if a copyholder dye, leaving his house in decay and not sufficiently repaired, that the next

* *i. e.* I conceive no heriot shall be paid *on her death*.
(C. W.)

life after him shall repair it, and not the homage of the manor, for next life might have complained thereof before them in court, and so have had it repaired. But if it so fall into the lord's hands by the death or forfeiture of the last life having not being presented or payned by the homage at the last court, that the homage, viz. the whole customary tenants of that particular manor shall repair the same at their charges, for that it comes ruinous to their lord by their default.

24th. *Item.* The custom is, that the lord of the manor may, for fines for contempt, treble damages for wast, and the like amer-ciements imposed in open court upon any copyhold tenant, distrain any cattle going upon any such copyhold lands, either of the copyholder's own, or his under tenant's, because the same was adjudged by the homage themselves to be just and right: which received a trial at Lent assizes, *Anno 14 Regis Caroli*, between *Tyler* plaintiff, and *Fillimore* defendant, and then were three presidents fresh in memory vouched and proved by twenty eight copyholders, produced as witnesses for the defendant, out of each manor three or

Lord may for fine, &c. distrain the cattle of tenant or his under-tenant.

four; whereof the judge, upon hearing seven only, was so satisfied, that he bid the plaintiff be nonsuited, (vidzt.) one president twenty years ago in the manor of Alkington, when Thomas Bayleye's cattle were taken and impounded for treble damage in waste committed by Clutterbuck the copyholder. The second in the manor of Cam about seventeen years ago, when Tyler's cattle were taken tenant to Parker the copyholder, who had committed waste, and amerced in the treble damages. The third, in the manor of Cowley, when treble damages was levied, about five years ago, upon the cattle of Richard Woodward, who rented the copyhold of widow Fords, who committed the waste; and they all affirmed, that the lord was at his election, whether he would take the cattle of the copyholder, or of his lessee, for any amerciamment, which being impounded, were not to be replevied by their custom, because the custom was in favour of the copyholder, who, otherwise, forfeited his estate in wast, and for that the wast was valued by themselves upon oath, at the lord's court, which the lord was tyed to accept of, and not to take the forfeiture of the copyhold forfeited by

the common law. The like president was in Hinton manor between Lewis and Joseph Hopton.

25th. *Item.* The custom is, that if any copyholder commit felony, above the value of twelve pence, and *thereof be convicted by due course of law* *, this is a forfeiture of his copyhold estate, as well as by the common law.

Felony to 12d. value, a forfeiture.

26th. *Item.* By the custom, no widow, holding by her widow's estate, can alter or change the nature of her land, but to continue it the same quality and condition as the grounds were, when her husband died, and not convert that into arable, which was land pasture, and the like ; but, in all things, to continue such her holding in the same plight, as it was past to her, without a prejudice to those in remainder or reversion, for that such widow's estate is only by the curtesy of the custom, and not by any grant *by her* made to her in the copy.

Widows cannot change the nature of the land other than as it falls to them.

* See my *Copyh.* vol. i. p. [346]. [348].

27th. *Item.* The general custom throughout the whole hundred and barony of Berkeley is, that, as well upon alienations of freehold lands as upon descents, relieves are paid, which, in all antient rolls, are entered *secundum consuetudinem patriæ*, and so for herriott service *.

Examinatur et concordat cum Rotulis Curiae.

Per me, JOHĒM SMYTH.

Seneschallum ibidem.

* But would not heriots due *secund. consuet. patriæ* be heriots custom? C. W. And *vide* my *Copyh.* vol. ii. of *Heriot Custom.*

No. VIII.

Customs of the manors of Stepney al. Stebunheath and Hackney, in the county of Middlesex, as confirmed by Stat. 21 Jac. cap. 6.

Imprimis. By the customs of the said manors, and either of them, all the copyhold lands, ten^{ts}. and heredit^s, which the particular persons, named parties to the indentures, whereunto these schedules are annexed, do hold or enjoy, are and (time whereof the contrary hath not been within the memory of man) have been copyhold and customary lands, ten^{ts}. and heredit^s of inheritance demised and demisable by copy of court roll of the manors aforesaid, or one of them respectively, according to customs of the manor, whereof the same are holden; and all copies of court rolls of the same manors, and either of them, by all the time aforesaid, for the same lands, tenements, and heredit^s, have been made, and ought to be made to hold of the lord by the rod,

according to the custom of the manor whereof the same is holden, by the rents and services thereof due and accustomed; and all the said lands, tenements, and hereditals have been passed, and are to pass and go from such persons, as, according to the contents of these schedules, have power and are enabled to make surrenders to any other person or persons, by way of surrender, to be made to the hands of the lord, by the acceptance of the steward of the manor, or his deputy for the time being, in court or out of court, or by the acceptance of the reeve of the manor, whereof the same are holden, or by his deputy, within the same manor or elsewhere, in presence of six customary tenants, or by any headborough of some township or hamlet within that manor, in presence of six customary tenants, in or out of the same manors, which surrender or surrenders have been, and shall and may be, to the use of any person or persons and their heirs for ever, in fee simple, or any person or persons in fee tail, or for life or lives with remainders or without remainders, as lands may be assured by the course of the common laws of this realm, or else to the

use of the last will and testament of the surrenderers, or of any other persons, according to the intent and limitation of such last will and testament.

2dly. *Item.* The rents of all the tenements, both freeholders and copyholders, which hold any messuages, cottages, lands, tenements, or heredit of the said manors, or of either of them, are yearly payable only at the Feast of St. Michael the Archangel, to the lord and his heirs, the same to be collected by the reeves of the said manors, (severally and respectively to be yearly chosen, as hereafter is expressed,) or their deputies; and all and every the said customary or copyhold tenants to pay the several yearly rents, now yearly due and payable, for their several copyholds; and if any of the said copyholds, for which any entire quit-rent is now paid, shall hereafter come into several hands, the rent thereof shall be than apportioned by the homage at the court of the manor whereof the same are holden, and so much only, as by the homage shall be appointed to be paid, (*pro rata*,) shall be paid to the lord for the time being.

3. *Item.* All and every copyhold tenant of the said manors, or either of them, which now be, or hereafter, for the time being, shall be, ought to appear yearly at two general courts, holden for the manors, whereof his lands or tenements are holden, upon warning, as hereafter followeth, and also so many of them, at all other set or appointed courts, set, appointed, and kept for the said manor, whereof their lands are holden, under the number of eighteen, as shall be for that purpose especially warned thereunto by the reeve, or his sufficient deputy, for the time being. And the said tenants shall there do their suits and services according to their tenures, except they be essoined, licensed, or have some other lawful excuse, upon the pain hereafter following ; which two general courts have been commonly kept yearly, the one of them on Tuesday the ninth day after Easter Day, and the other about the Feast of St. Andrew the Apostle, upon reasonable warning ; that is to say, in the churches and chapels within the said manors, openly, upon the Sunday seven-night, or Sunday fort-night, before the day of such court to be holden.

4. *Item.* If any of the copyhold or customary tenants of the said manors, or of either of them, do or shall make default of their appearance at any of the said two general courts to which their suits shall be due: or if such copyhold tenants as shall be especially and lawfully warned to appear at any of the said set courts, in form aforesaid, yearly to be holden, do make default, (to which the said suit is or shall be due,) and warning openly given, as aforesaid, of the same day and place of the holding of the same general courts, and upon special and lawful warning to be given for the said several set or purchased courts, that then they that shall so make default, (except they be essoined, or have some other lawful or reasonable excuse,) shall be amerced by the homage of the said court, to be taxed and affixed by two afferors of the said court; that is to say, by two tenants of the homage, whereof the steward of the said manors, or of either of them for the time being, hath always used to chuse and shall chuse one for the lord; and the residue of the homage have chosen and hereafter shall chuse the other.

5. *Item.* If any tenant be summoned to appear at any set court or courts, to be holden within the said manors, or in any of them, and doth appear upon the said summons, he ought and is to have for his pains, four pence and his dinner, or eight and no dinner, which ought, and is by the said custom, to be paid by such person or persons who shall be the cause that any such tenants do appear for his or their matter, so it be not any matter or cause that concerneth an enquiry or presentment to be made only concerning the lord for the time being, his heirs, or assigns.

6. *Item.* The copyhold tenants of the said manors, and of either of them, ought to have every of them like allowance upon every view by them to be made, and upon every petition by them to be made, or upon other summons to appear betwext tenant and tenant, when they be appointed thereunto by precept from the steward of the said manors, or of either of them for the time being, or by his sufficient deputy.

7. *Item.* The homage of the court of the

said manors, or of any of them, may appoint six or seven tenants upon any complaint to them made by any person or persons being tenants of the said manors, or of either of them in open court, that he or they be wronged by any incroachment or any annoyance to their copyhold tenements, which tenants shall after the said court, view the same incroachment, annoyance, and impediment, or place whereof any such complaint shall be made, and thereupon to present or notify the same by a day to a steward, or to the homage of the next general court, that there be set a pain or amercement, or both for the same, by the homage at the said next court, according to the quality of the offence.

8. *Item.* The homage of either of the said manors are to make presentment at every general court to be holden for the said manors, or for either of them, of all the customary or copyhold tenants that they shall know shall be deceased after the court than last past, at or any time before the said court, whose deaths were not then found and presented, and that held any copyhold or customary, or reputed copyhold or customary lands or

tenements of the said manors, or of either of them; and also as near as they can present what lands every of them died seized of, and of what estate, and when he died, and who is the next heir or heirs to the same person or persons so dying seized, and of what age or ages the said heir or heirs shall then be of, as near as they can.

9. *Item.* The homage likewise ought to present the deaths of the freeholders, and when they died, and who be their next heir or heirs, and the ages of their heirs which held any lands or tenements of the said manors, or of either of them; and the nature of their tenures so near as they can, to the intent the lord may have his relief, which is but the value of one-year's quit-rent of the tenements holden of the said manors, or of either of them by socage tenure.

10. *Item.* If the homage, at any of the said courts of either of the said manors, shall not know who is next heir or heirs to any of the said customary tenants so dying seized, then they shall make their presentments so accordingly, and then upon the said presentment, at the next general court

then after, the steward of the said manors or either of them, or his deputy for the time being, within the same presentment shall so be made, shall cause a proclamation to be made in open court, to the intent every such heir or heirs may have knowledge to come and take up the lands and tenements of his or their ancestors, and so the steward or his deputy shall cause a proclamation to be made from general court to general court, until three open and public proclamations be made in full court, at three general courts, which general courts by the said custom are used to be holden commonly one half year after another or thereabouts; so that from the presentment made by the said homage of the dying seized of the said last tenant, unto the last proclamation, shall be fully two years; and if there shall come no heir of the said lands or tenements, nor any for him nor them, before the end of the court next after the court whereat the last of the said three proclamations shall be made, to make his or their claim, and prove himself or themselves to the homage of the said court, in such sort as they or the greater part of them shall allow of, to be the next heir or heirs of the whole blood to the said tenant

deceased, or to have title to the lands and tenements, nor to shew and prove as aforesaid, who is or ought to be next heir or heirs of the whole blood, or shew or prove who is or ought to be next heir or heirs, or to have title as next in remainder or reversion as aforesaid; that then the said lands and tenements be forfeited, or shall escheat unto the lord of the said manor or manors for the time being, except that if the said lands and tenements shall or ought immediately to descend, remain, revert, or come to any woman covert, or infant within the age of one and twenty years, or to any person or persons not *sanæ memoriæ*, or that shall not be within the realm at the time of the death of the said last tenant dying so seized, or at the time of the first, second, or third proclamation to be made as aforesaid, that then, in every such case, the lord for the time being shall have but the profits of the said lands and tenements, until such persons, or his, her, or their heir or heirs shall come and make their claim, so the said claim be made by the said woman, or her heirs, within five years next after the death of her said husband, or by her husband and herself, during the time of her coverture;

and by such being within age, or his heirs, before he shall or should accomplish his full age of one and twenty years, or within five years then next after he shall or should accomplish his full age of one and twenty years; and, by the person *non sanæ memoriæ*, within five years next after he shall recover, and become *sanæ memoriæ*, and by the heir of such person *non sanæ memoriæ*, within five years next after the death of his said ancestor, or before; and by the said person that shall be so out of the realm, or his heirs, within five years after he shall return, or, if he shall not return, by his heirs within five years after his death; and by the said person or persons in prison, within one whole year next after his or their enlargement from such imprisonment.

11. *Item.* In the said manors or either of them, women ought not to have dowers of any customary lands or tenements within the manors aforesaid, nor in any of them, nor men to have any estate as tenants by the courtesy of England.

12. *Item.* If any shall be seized of any customary lands or tenements holden of the said manors, or of either of them, of an estate

of inheritance, and shall have two sons, or three sons, or more ; or, having no sons, shall have divers daughters ; or, having neither sons nor daughters, shall have divers collateral heirs in one nearness of blood, or that or to make their resort from those that were of the same nearness of blood to the tenant dying ; they shall be all co-heirs to their said father, mother, or other ancestor touching the said customary lands and tenements according to the custom of gavelkind.

13. *Item.* If any man or woman die seized as aforesaid, of any customary lands or tenements of any estate of inheritance holden of the said manors, or of any of them, and shall have issue two or three sons or more, whereof one, or two, or more of them shall be married, and have issue in the life of their father or mother, and shall die before his or their said father or mother ; or, having no sons, shall have divers daughters, whereof one or more shall be married and have issue, and die in the life of the father or mother, that then the said issue shall inherit and be co-heir with the said son or sons, daughter or daughters, that shall survive his, her, or their said father or mother that so shall die seized as is

aforesaid, whether the said issue be male or female, according to the custom of gavelkind.

15. *Item.* If any person so dying seized as aforesaid, without issue of his body, and having divers brothers of the whole blood, whereof the one or some of them shall have been married and shall have issue, and after issue had shall die before the said brother dying seized as aforesaid, that than the issues of the said brother or brothers so dying before him that died seized as aforesaid, shall join and be co-heir with the brother or brothers that surviveth the brother that so died seized as aforesaid, whether the said issue be males or females. But males and females of one venter cannot join to be co-heirs together; so that the course of descents is to be observed by the said custom, according to the custom and nature of lands in gavelkind.

16. *Item.* Likewise shall the issue of the daughter that shall die in the life of the father or mother, be co-heir with the aunt that liveth being of the whole blood.

17. *Item.* Likewise shall the uncles, and

the uncles brothers children, being of the whole blood, be co-heirs together as aforesaid.

18. *Item.* Likewise shall the aunts and the aunts sisters children join and be co-heirs as aforesaid, and so forth of all further degrees of all collateral heirs, being of the whole blood, which may convey themselves to be any cousins and heirs of the whole blood to any person or persons dying seized of any of the aforesaid customary lands or tenements, according to the custom of gavel-kind.

19. *Item.* By the custom of the said several manors, every copyholder of inheritance in fee simple may surrender his said copyhold lands and tenements, or any part or parcel thereof, unto the lord, to the use of any person or persons, and to his and their heirs for ever, or to his or their heirs of his or their bodies, or any otherwise in tail, or for life or lives, or years, or to any person or persons, and his or their heirs, to the intent the said copyhold tenant may declare his last will and testament upon the same lands and tenements, or to any other

use or uses, unless it be to any corporation or corporations, or bodies politick or corporate; and every copyholder in tail, or for life, lives, or years, of either of the said manors, may, in like manner, by the customs of the said manors, and of either of them, surrender their copyhold lands, tenements, or hereditaments, or any part thereof, according to the nature of their estates, so the same surrender be made according to the custom concerning surrenders, as afore in these presents is specified, or hereafter ensueth; and all the same persons to whose use every surrender shall be made, are to have their copies made to hold of the lord by the rod, according to the custom of the manor whereof they have been holden by the rents and services thereof due and accustomed; upon every of which surrenders the fine and fines for the same hereafter expressed, is by the said custom to be paid and to be entered into the several copies or the margents of them.

20. *Item.* By the custom of the said manors, and of either of them, every surrender taken out of the court by the headborough or reeve, or his deputy, and in the presence

of six customary tenants of the manor, of which the said lands or tenements surrendered shall be parcels, witnessing the same surrender of any person or persons of his or their customary lands or tenements holden of the said manors, or of either of them; and being of the full age of one-and-twenty years or upwards, (except women covert baron, and such as are not of perfect mind,) to the use of any person or persons, are and ought to be as good as if it were taken in open court by the said steward of the manors, or of either of them, so that such surrender be by the homage presented as hereafter followeth.

21. *Item.* The surrender by a woman covert baron being of the age of one and twenty years, made together with her husband, of the lands, tenements, or hereditaments whereof she is seized or estated, is and shall be a good surrender of her lands, tenements, and hereditaments, holden of the said manors, or of either of them, the same surrender being made in her extremity of sickness, or likelihood of death, by the acceptance of the reeve of the manor whereof the lands and tenements so surrendered are

parcel, and his deputy, or either of them, in the presence of six customary tenants, or by the acceptance of the headborough in the presence of six customary tenants; but if any such woman covert baron so surrendering, do after that recover her health, and do not at the next general court then following ratify and confirm the same before the steward, or his deputy, in the presence of the homage, then the same surrender is and shall be void; and all other surrenders made by any woman covert baron, (except before the steward of the manor or his deputy, where she shall be solely examined, or in extremity of sickness as is aforesaid,) are and shall be void.

22. *Item.* All surrenders taken of women as aforesaid, or of men by the reeve or his deputy, or by the headborough for the time being, and in the presence of six customary tenants as is aforesaid, shall be and ought to be by the homage presented at the first or second next general court holden for the manor whereof the same is holden, after the taking thereof, or within one year and a day next after the taking of the same surrender, if any such general court be holden

within a year and a day next after the same surrender so taken : or else if no such general court be holden within a year and a day, then to be by the homage presented at the next general court to be holden for the same manor next after the same year and day, is and shall be a good surrender, as if the same had been taken by the steward or his deputy of that manor, or woman examined as aforesaid in open court ; or otherwise all surrenders taken by the said reeve or his deputy, or by a headborough, and in presence of six tenants, and not presented by the said homage in manner and form aforesaid, are and shall be void ; but when any surrender shall be made by any person to the use of his or her last will and testament to the intent that he or she may thereby or thereupon make and declare his or her last will and testament, that surrender is to be presented at the first or second next general court of that manor, happening next after the decease of the party so surrendering, perfectly known, and not before. But if the same be not at the first or second court, next after the death of the same party, presented, or if the same party hath before in his life-time made any other surrender of the

same lands or tenements, the same to be presented, then the said surrender to the use of such last will and testament is and shall be void.

23. *Item.* The homage must write *billa vera* upon every surrender by them presented, when they find the same surrenders agreeable to the custom, and also upon every other of their presentments, shall make *billa vera*, when they be agreeable to the said custom; or else if the said homage receive any surrender, or other bills to them exhibited, which be doubtful or repugnant to the custom of the manor, whereof the land is holden, upon every such surrender or bill, *ignoramus* shall be made, or the like subscription, to the intent it may be known to be doubtful or naught, or else return the same naughty surrenders or bills back again to the parties that exhibited the same.

24. *Item.* Every woman being covert baron of the age of one and twenty years, or upwards, having any customary lands or tenements to her, or her heirs, or for life, lives, or years, and holden of the said manors, or either of them, may, together with her husband, by

the hands of the said steward, or his sufficient deputy, surrender all her said lands and tenements, interest, and term of years to the use of her said husband, or to any other person or persons at their will and pleasure, so as she be solely and secretly examined before the steward or his sufficient deputy.

25. *Item.* All surrenders taken out of the court by the steward of the said manors, or of any of them, or his sufficient deputy, of any person or persons being of the full age of one and twenty years, or more, and *sane memoriae*, of any of their customary lands and tenements holden of the said manors, or of either of them, be good by the customs of the said manors, and of either of them, and the same ought to be published and notified to the homage at the next general court, or else those surrenders are also void.

No. IX.

IN PARLIAMENT.

APUD CIVIT. WESTMONAST. 18 DIE JUNII,
1 CAR. I.

*An Act for the Settling or Confirmation
of the Copyhold Estates and Customs
of the Tenants in base Tenure, of the
Manor of Cheltenham, in the County
of Gloucester, and of the Manor of
Ashley, otherwise called Charlton
Kings, in the said County, being
holden of the said Manor of Cheltenham,
according to the agreement
thereof made between the King's most
excellent Majesty, being then Prince
of Wales, Duke of Cornwall and of
York, and Earl of Chester, Lord of
the said Manor of Cheltenham, and
Giles Grevill, Esq. Lord of the said
Manor of Ashley, and the said Copy-*

*holders of the said several Manors :
cujus quidem Statuti Tenor sequitur
in hæc Verba.*

WHEREAS, within the said manor of Cheltenham, and within the said manor of Ashley, the said copyholders in base tenure of those several manors having customary estates of inheritance to them and their heirs in their several customary messuages and lands, many questions and doubts have been of late made, touching their customs ; many of them being so uncertain, unreasonable, and inconvenient, that it hath caused many suits in law, and great expences in money, and much loss and trouble, insomuch that in many years past the said manors have yielded but little profits, either to lords or tenants ; for remedy whereof, and for avoiding of suits, and for the quieting and establishing of the estates of tenants and their posterity within the said manors, there being a composition made, and an agreement had between our said sovereign lord the king's majesty, (being then Prince of Wales, and lord of the said manor of Cheltenham,) with the advice of his then council, and comm^{rs}. for his revenue,

and the copyholders of that s^d. manor, and between the said Giles Grevill, esq. lord of the said manor of Ashley, and of the copyholders of that manor, according to which compositions and agreements it is humbly desired by the said tenants and copyholders of the said several manors, that it be enacted,

And be it enacted, by the king's most excellent majesty, the lords spiritual and temporal, and the commons, in this present Parliament assembled, and by the authority of the same Parliament, that the said copyholders of the said manors, and either of em, shall and may henceforth hold the said customary messuages and lands of the said manors, severally and respectively, by copies of court roll, to them and their heirs, by suit of court, and by the yearly rents, work, silver, Peter-pence and bead reap money, to be paid annually and respectively, as heretofore hath been used: and that the said copyholders shall pay their several fines, for admittances, both upon descents and surrenders, unto the several lords of the same manors, severally and respectively, double the rents only payable for these copyholders,

not adding thereunto the work, silver, Peterpence and bead reap money, or other payments.

And further, that the said copyholders, upon their several deaths and surrenders, shall pay for and in lieu of an heriot, the sum of 30 shillings for every messuage and the lands and tenements thereunto belonging, or therewith used, and so according to that rate for the quantity, more or less, if it shall happen any messuage, lands, or tenements to be divided: and that the descents of the said customary lands shall be from henceforth in fee simple, according to the rules of common law.

Saving only, and be it also enacted, by the authority aforesaid, that if any copyholders of the said manors, or of either of them, shall die without issue male, having daughters, that the eldest daughter shall inherit solely, as the eldest son ought to do by the course of the common law: and that if any of the said customary lands or tenements shall or ought, according to the course of the common law, to descend to any sisters, aunts, or female cousins, that

then, in every such case, the eldest sister, aunt, or female cousin, shall inherit the same lands and tenements solely and alone.

And be it further enacted, by the authority aforesaid, that all and every the copyholders of the said several manors, for the time being, shall and may surrender their several messuages and lands customary, or any part thereof, to the use of any person or persons, as well in open court before the steward of the said several manors respectively for the time being, as out of court, before two copyholders at the least of the said manors respectively; and shall and may, likewise, make a grant of their several messuages and lands customary, or any part or parts thereof, to any person or persons for the grantor's life and twelve years after his decease, or for twelve or any less number of years, according as now the said copyholders may do, by the custom of the said copyholders paying to their said lords, severally and respectively, (upon every grant) for life and twelve years of a messuage, with the lands and tenements thereunto belonging, or therewith used, one whole year's antient rent for a fine, and so

according to the quantity of the lands to be granted.

And be it likewise enacted, by the authority aforesaid, that it shall and may be lawful for every of the copyholders of the said manors, for the time being, to grant, limit, and assign, all or any part of their several customary messuages and lands, to any of their wives, for term of the life of any wife, for her jointure, paying for a fine to the lords of the said manors respectively, upon every such grant of a whole messuage, with the lands and tenements thereunto belonging, or therewith used, half a year's antient rent ; and so, likewise, according to the quantity of the lands so granted ; and that all and every such grants, limitations, and assignments, so to be made as is aforesaid, shall be made either in open court, before the steward of those several manors respectively, or out of court before two copyholders at the least of the said several manors respectively. And that such of the said surrenders, grants, limitations, and assignments, as shall be made out of court, shall be presented at the next publick court of the said manors respectively, to be holden upon lawful

summons by those copyholders before whom such surrenders, grants, limitations, and assignments shall be so made or the survivor of them, upon pain of forfeiture to the lord of that manor, within which the default shall be, ten shillings a-piece, to be levied and recovered by actions of debts or distress, as shall seem good to the lord and the steward or stewards of the said respective courts. And upon default of presenting such surrenders, grants, limitations, and assignments, at every publick court, shall be holden, as aforesaid, they shall forfeit such a fine as shall be imposed on them by the steward or stewards of the respective manors, for the time being, so that none of the said fines, so to be imposed, exceed the sum of twenty shillings a-piece for any one default; and every such fine so to be imposed, shall and may be levied and recovered as aforesaid.

And be it also enacted, that all such surrenders, grants, limitations, and assignments, so to be made, as aforesaid, shall be enrolled in the several court rolls of the said manors respectively, paying to the steward for the enrolling and copying thereof, such fees as hath been accustomed.

Provided always that all former grants, at any time heretofore made, for the life of the grantor and twelve years after, or of or for any lesser term, according to the custom heretofore used, shall and may be enjoyed accordingly.

And further be it enacted, by the authority aforesaid, that the wives of all and every the copyholders of the said manors, and every of them, shall, from henceforth, have for dower, during their lives, the third part only of their husband's customary lands; and the said third part to be set forth and assigned to them by the homage of the court wherein the presentment of the death of the husband shall be presented, or within such time next after the same court as shall be limited by the stewards in that behalf. But all such wife and wives as shall hereafter accept and take a jointure of their husband's customary lands within the said manors or either of them, by grant, limitation, or assignment as aforesaid, before her marriage, or shall accept of such a jointure after marriage, and agree thereunto, after the death of her said husband, shall be concluded and barred to demand any dower of those or any customary lands of such

husband, within the said manors, or either of them.

Provided always, that women now living, being heretofore wives of any of the copyholders of the said manors or either of them, dying tenants, and also the now wives of any of the copyholders of the said manor, or either of them, shall and may enjoy the customary lands of their now or late husbands dying tenants, for their lives and twelve years after, as if this act had never been had or made.

This was the custom before this act passed.
Cro. Car. 568.

And further be it enacted, by the authority aforesaid, that all and every the wife and wives of the copyholders of the said manors, or either of them, which shall join in any grant or surrender with her or their husbands, of any the customary messuages or lands, being first solely and secretly examined in court according to the custom there, shall be concluded and barred afterwards to claim any right, title, or estate, whatsoever of or in those lands so by her surrendered and granted as aforesaid.

Be it further enacted, by the authority

aforesaid, that no husband which hereafter shall be married to a wife seized of any copyhold land within the said manors, shall have any power right or interest by surviving the wife and fining with the lord, or otherwise by customs of the said manors, or either of them, to have, hold, or keep, or otherwise to convey or dispose the said lands from the right heir of the said wife; or that any woman which hereafter shall be married to a husband seized of any copyhold lands within the said manor, shall have any power, right, or title by surviving her husband, or otherwise by the custom of the said manors, to have, hold, or keep, or otherwise to convey and dispose, the said lands from the heir of the said husband.

And be it further enacted, by the authority aforesaid, that all customs and usages heretofore used or allowed within the said manors, or either of them, concerning the having and enjoying of any of the said customary lands and tenements by any widow of any customary tenant of the same manors or either of them, or by any after taken husband of such widow, or by the heirs of any such wife or after taken husband, or concerning the

descending of any of the said customary lands or tenements to any other person or persons, or in any other manner or form than is hereinbefore declared, shall be utterly void and of no effect; and that all other lawful customs and usages heretofore used or allowed within the said manors, or either of 'em, not being repugnant and contrary to the true meaning of this act, shall be and remain good and effectual, and are and shall be ratified and confirmed by the authority of this present act.

No. X.

Custom as to the Estate of the Husband and Wife, in the Manor of Cheltenham, in the County of Gloucester, previously to the preceding Act, 1 Car. 1. Extracted from the Survey of the Manor.

To the fowerteenth and fyfteenth articles they answere and saye, that to their knowledge, not any ffreehoulder, customary tenante, or other houlding land of or belonging unto this mannor, hath committed any treason, felony, or other acte, whereby the land or other benefit ought to fall to the prince. And they know not of any tenante of this mannor to stand outlawed; nether know they that any bastard doth possese any land within or belonging as hereunto A supposed father, or unto any other, nor any alien or stranger not made denison.

To the sixteenth article they answere and saie, that the customs of the mannor are divers:

— Feyrst, the customary tenants in basse tenure of this mannor doe respectively hould and are seized of their tenements of an estate of inheritance customarie, (viz.) *sibi et heredibz. suis*, descendible to their yongest sonnes, and in defalte thereof to their yongest daughters, and in defalte thereof to their yongest brothers, and in defalte thereof to their youngest sisters, &c. according to the custome of the sayd mannor.

Allsoe, if any customary tenant aforesayd, make his ffyne for his admittance and dye, havinge a wyfe, she is to have the land or tenemente whereunto her sayd husband was so admitted, for. her lyfe and twelve years after, if she shall dispose of it. And yf the wyfe shall marry agayne, and her husband that she shall soe marry shall agree with the lord and make his fyne, then shall he gaine and have the land or tenement *to him and his*, of an estate of an inheritance descendable to his yongest sonne, or in default thereof to his yongest daughter, according to the custome of the mannor; and yf he over live his wyfe, and dye without issue of his body, his customary tenement shall goe to the yongest yssue male of the body of

the fyrst husband by whome the land did move ; and for defalte of such issue male, then shall it go to the yongest issue female of such fyrst husband : and yf such fyrst husband be deade wth out such issue of his body, then doth it go to the kindred of every last husband in order so longe as any can be found being heires by discenté, or taken in marriadge by purchase ; that is to saye, yf he bee a taker, then only to the issue of his body in manner as aforesayd, and if he be heire then in full course of discente according to the custom of the mannor as is before fyrst declared in answer to this article. Allsoe, yf any man marry with any heire female of any customarie tenement in basse tenure, then yf he will make a fyne with the lord to make himsealfe the lord's tenante of his wieves tenement, as he may if he will, his ffyne is certyne, (viz.) double the rente. Allsoe, if any man who doth purchase any customary tenement escheated, doth marry a wyfe, which wyfe over liveth, shee is to have the same customary tenement during her life and twelve yeares after, yf she shall soe dispose it ; and yf the same wyfe shall happen to marry another husband whoe shall make his ffyne and agree with the lord

of the manor, then such second husband, yf he shall over live his wyfe, shall have the customary tenante to him and his heirs in state of a customary inheritance, as a taker hath the same by the custome as aforesaid. Allsoe, no customary tenant in basse tenure of the said manor, forfeiteth or looseth his tenement nor any parte thereof by treason, petty treason, murder, felony, utlagary, or any other offence or act, but that the said tenemente shall be enjoyed by such tenante and his, according to the custom of the manor, any such offence or acte to the contrary notwithstanding. All which several customes before men'coned they believe to be trewe; and many other customs of the sayde mannor that are as they suppose, which may be knowne as the case shall hereafter fall out, but p'sently they do not remember them. The sayd customs have ever beene past the memory of man, used and confirmed by their long continuance, the beginning whereof is unknown; and they ought not to paye any thing for brewing beare ore alle.

No. XI.

CUSTOMS OF THE MANOR OF DAWLISH.

Mannour
de
Dawlish. } *The Presentment of the Homage
of the Court Baron and Court of
Survey of Thomas Veron, Esq.
Lord or Farmer of the Mannour
aforesaid, there held the twenty-
second Day of September, Anno
Dom. 1751, by Jacob Cliffe, Esq.
Steward there.*

Imprimis. We present the survey now
taken by the steward.

Item. We present the custom of the man-
nour as underneath.

First. That the custom of this mannour as
to letting of estates and granting of copies by
the lord or farmer, is two lives in joint tenancy
in possession, and one life in reversion of such
two joint lives.

Secondly. That the widow of every tenant

dying in actual possession of any copyhold estate, is entituled by the custom of this manor to the enjoyment of such copyhold tenement during her widowhood, and no longer.

Thirdly. Where any joint tenant dyes, leaving a widow, such widow is, by the custom of this mannour, entituled to the enjoyment of her deceased husband's moiety, in joint tenancy with the surviving joint tenant, during her widowhood only.

Fourthly. That upon the death of the surviving joint tenant, if he leaves a widow, his widow shall enjoy in joint tenancy with the other deceased joint tenant's widow, as long as such widow of such last dying joint tenant continues a widow, and no longer; and upon the death or marriage of either of them, the survivor to enjoy the whole during her widowhood.

Fifthly. Where there is but one life or one widowhood in being upon any copyhold tenement, the lord or farmer of this mannour can grant a copy for one life in reversion of such life or widowhood, and no more, unless

such life or widow, in present possession, will surrender his or her estate for life or widowhood into the lord's hands, to the intent that a copy of joint tenancy may be granted.

Sixthly. As to the steward's fees, we present the ancient custom to pay 3*s.* 4*d.* for every copy upon a cottage, and for every copy upon a tenement 6*s.* 8*d.* and for taking of every surrender one shilling, and upon the admittance of every tenant 6*s.* 6*d.* more to the jury.

Seventhly. We present the custom of the mannour to be, that any person in present possession of any copyhold tenement or cottage, his nearest of kin ought to be preferred in the renewing or purchasing of such tenement, before a stranger, unless such possessor or his next of kin refuse it.

Eighthly. We present the custom to be, that where the lord or his steward shall grant timber to any tenant for building, whether to be felled upon his own or other tenements, such timber ought to be delivered by the reeve for the time being, for which he is to receive for every tree, as a

fee, 4*d.* and the person on whose tenement the same shall be felled, is to have the root, top, and lop of such trees.

Ninthly. That where any tenant shall let his tenement to farm to any other, and not dwell upon it, and manure it himself, he is to pay to the lord a fine of the value of the high rent annually, besides paying the steward's fees for the copy of such licence.

Tenthly. *Item.* We present, by the custom of this manor, the reeve is entituled to a fee of 13*s.* 4*d.* yearly, for collecting and paying in the high rents to the church, which fee has been antiently paid by the steward of the church.

Eleventhly. That if any tenant dye after Michaelmas Day, his executors or assigns are to have the possession, and to have the emblements of the land until Christmas next following; and if after Christmas Day, until the Lady Day then next following; and if after our Lady Day, then until our Michaelmas Day then next following, and that as well against the lord as against any other person or persons taking next.

No. XII.

MANOR OF TAUNTON AND TAUNTON
DEANE, IN THE COUNTY OF SOMERSET.

Extract from "A Customary containing the chief Points of the Mannor of Taunton and Taunton Deane, in the County of Somerset, &c. agreed on by a Jury sworn in the Year 1747, &c.

“ IF any tenant die seized of any customary lands or tenements of inheritance within the said manor, and having a wife at the time of his death, then his wife ought, and hath used, time out of mind, to inherit the same lands as next heir to her husband, by the custom of the manor, and be admitted tenant thereto; to hold the same to her and her heirs for ever, according to the custom of the said manor, and in as ample a manner as any customary tenant there holds his lands, under the fines, rents, heriots, customs, duties, suits, and services, for the same due and accustomed.”

From the above extract, which is the whole that relates to man and wife, it is evident that, though by the custom the wife was to inherit from the husband, it was not so *vice versâ*, that the husband was to inherit from the wife. The former custom still obtains in the manor, the other never has existed.

From a professional gentleman who has had a good deal to do with the manor, I have been given to understand, that to entitle the husband to the wife's lands, he must get himself admitted tenant, paying a fine to the lord, in order to which the wife is solely examined by the steward as to her consent.

No. XIII.

CUSTOMS OF THE MANOR OF PAYNSWICKE, IN THE COUNTY OF GLOUCESTER.

THE words *sibi et suis* make and create within the said manor a customary estate of inheritance in fee simple, at the will of the lord, according to the custom of the said manor. Preamble, and Art. 1.

Art. 6. Heriot the best quick cattle, and in default of such cattle the best household stuff or goods of what kind soever.

Art. 7. Upon a descent, a fine of one year's rent and heriot, if the land be heriotable.

Art. 8. On every surrender, either in possession or reversion, the lord is to have seven year's rent of the thing so surrendered, for his fine; but a surrender of a life estate to him in reversion, one year's rent as a fine. *Quære*, if good.

Art. 9. On a surrender of a reversion, the heriot is not due till the death of the surrenderor, (but the fine is due immediately.)

Art. 10. Widow shall be admitted to freebench by the payment of a penny.

Art. 11. No heriot due on her death.

Art. 13. As to leasing, see page 34-5. Lease to be void on forfeiture, &c. not good*.

* Q. See *Hutton*, 101.

No. XIV.

Com. Hertf. ss Maner'm de Hemel Hempsted Cum Turibz Membris & App'tinent.

A Survey of the Manor of Hemelhempsted, with y^e Rights, Members, and Apurtenances thereof, lyeinge and beinge in the Countie of Hertford, late p'cell of the Possessions of Charles Stuart, late King of England, made and taken by us whose Names are hereunto subscribed, in the Moonth of August 1650, by v'tue of a Com'icon, granted upon an Act of the Commons assembled in P^rliament, for the Sale of the Hon^r. Manors, and Lands heretofore belonging to the late King, Queen, and Prince, under the Hands and Seals of 5 or more of the Trustees in the said Act named and appointed.

MEMORANDUMS.

THERE is a court baron and leete belongeinge to the said manor, usually kept in a loft over the

market-house, called the courte loft, at the will of the lords.

The fines upon admittances of copyhold^r. are and alwayes have been c'tain, viz. the halfe yeares quitt rent upon ev'ry descent, alienation, or altera'con.

That by the custome of the said manor, after the death of the everie tenant haveing a messuage or cottage, the lord of the said manor shall have for such messuage or cottage a herriot in manner followeing, viz. the second best live good, or in default thereof, the second best household good; and if it shall happen that any tenaunt at his death hath but one beast, then the heyre to choose the beast, and the lord to choose the best household good; but if any tenaunt of the said manor hath more than one messuage or cottage, then the tenant to pay for every such messuage twelve pence, and for every such cottage sixe pence, in the name of the herriott.

That upon every surrender, aliena'con, or altera'con duly certified of any messuage, cottage, lands, and tenements whatsoever, the byer to pay a fine after the rate of one halfe yeares quitt rent as aforesaid, and the seller to pay noe herriott if he be in good health at y^e. aliena'con or surrender makinge.

No. XV.

MANOR OF MARDEN *ad*. MAWARDINE, IN THE
COUNTY OF HEREFORD.

To the 13th article we present, that the customary land of this manor doth descend, after the death

of the ancestor, to his or her next heir, whether male or female, (viz.) the eldest son or eldest daughter, if any, and so in a distinct degree; and we know of no entail allowed by the custom, or that the same bears dower, but the widow of every copyholder bearing the heir, enjoys the whole for freebench during life, paying one penny for her admittance, but a man cannot be tenant by the courtesy.

Presented by the homage, August 12, 1720.

No. XVI.

MANOR OF GLASSENBURY, IN KENT.

Den of Thornden.

THEY also present, that *R. H.* who held of the lord of this manor 50 acres, &c. by suit of court from three weeks to three weeks; relief, when it shall happen, being half a year's rent*, by heriot being the best live beast of which the tenant shall die possessed, and by the yearly rent of —s. —d. and two hens, &c.

(Note, the lands within the manor are *frechold* in gavelkind,—there are no copyholds.)

Den of Iden.

Same services; relief half year's *quit* rent.

Den of Lucton.

Same services.

* See my *Copyh.* vol. i. p. [321].

Den of Swatlington.

Same services.

Den of Badlington.

Same services.

*(From the original minutes
of the court. C. W.)*

No. XVII.

Epsom.

DESCENT to the eldest son.

Richmond, Surry.

Fine only due on the *first* purchase. Thus, if *A.* purchase black acre, (not being a tenant of the manor before,) he shall fine; but if he afterwards purchase green acre, he shall not fine for it*.

Lambeth.

Same in Lambeth manor, which belongs to the Archbishop of Canterbury. [See *Post*, 399.]

Bewdley in Worcestershire.

As to demise, frank-bank, and devise without a surrender, see *Co. Entries*, 123. a. *Hill v. Hill*.

* See my *Copyh.* vol. i. p. [308.]

Manor of Wivenhoe, County of Essex.

Ric. Barre tenet unum Messuagium, &c. Et debet Tallagium, Sectam Curie et Merchet. hoc modo; quod si maritare voluerit Filiam suam cum quodam libero Homine extra Villam, faciet pacem Domini pro maritagio: et si eam maritaverit alicui Custumario * Ville, nihil dabit pro Maritagio.

Extent. Manerii de Wivenho. 40 Ed. III.

(*Exam. cum Orig. C. W.*)

* The tenements were customary tenements.

Adderbury, Oxfordshire.

Copyholds enfranchised, 15 Geo. 3, c. 88.

Arundel, Sussex.

Copyholds enfranchised, 37 Geo. 3. c. 40.

Alesley, Warwickshire.

Sale of copyhold lands, 43 Eliz. and 1 James 1.

Alvechurch, Worcestershire.

The lord hath only the bodies of timber trees upon the copyholds, the tenants have the lop top, &c. For heriot the lord has the best beast or good, where a copyholder dieth seised, if not otherwise expressed in the copy; and every widow marrying is to pay an heriot. The freeholders pay relief upon death only; but neither heriots nor relief are due for any

land within the borough or liberties thereof. The widow hath freebench. The executor to hold the lands or tenements till Michaelmas after the tenant dies; and if the tenant dies within a fortnight before Michaelmas, then to hold till Michaelmas twelve-month. The tenants have the benefit of common and power to dig marle. The estates have been granted to the tenants "*sibi et suis*" upon reasonable fines. The lord may keep court-leet and court-baron, and is patron of the living, which is worth 150*l.* a year. By the custom, the tenants may take what timber they have occasion for without licence of the lord, for house-boot, cart-boot, fire-boot, and may fell crops, lops and underwoods from their estates. Trees upon the waste belong to the lord. Two bridges to be repaired by the lord, at the cost of yearly 20*s.*; *viz.* the Court-bridge and Redford-bridge.—Nash's Worcestersh. vol. 1, p. 16.

Ardley, see Yardley, post 444.

Aston, Worcestershire.

The custom of the manor is, to grant one life in possession and three in reversion; fines arbitrary; the best beast for a heriot due upon the death or surrender of every tenant.—Nash, v. 1, p. 50.

Abbot, Kensington, Middlesex.

Item. We present that the ancient customs belonging to the free and copyholders, is that they may cut turves for their own use within the manor, upon the waste grounds, or dig sand, gravel, clay, and loome, for their own use, to be used within the same manor at any time. *Item.* We present

that no copyholder ought to pay for his fine above two years quit-rent upon his alienation. *Item.* We present that upon the death of any person no heriot is to be paid. *Item.* We present that no out-parishioner, holding land in the same manor, can cut turf, dig sand, gravel, clay or loome, or inter-common cattle with the inhabitants of said manor. —Faulkner's Kensington, 596.

Alrewas, Staffordshire.

This manor is ancient demesne. The custom of borough-English prevails in this manor, *i. e.* the youngest son is heir, and the lands not to be divided amongst the daughters, but the youngest daughter to have all, as at Stafford, Nottingham, Derby, and other ancient demesnes.—Shaw's Staffordsh. v. 1, p. 130.

The same customs prevail at *Lapley*.

Bagnor and Courage, Berkshire.

Widow of tenant in possession and dies seised, the whole estate is liable to freebench during her life.

The first copyholder is the tenant in possession, and on death, leaving a widow, the second life will be admitted; and when accepted tenant, his widow will have her freebench.

Braunton, Devonshire.

The lands of some estates within this manor descend to the elder, of others, to the younger son; they are all divided equally between daughters: the lands above-mentioned are distinguished

as lands of the elder, and of the younger holding. Widows are entitled to a life hold in the husband's inheritance, but forfeit upon marrying again, or being guilty of incontinence.

Badby, Northamptonshire.

Portion of this manor is copyhold of inheritance, with fine certain, subject to customary heriots. The first wife only of a copyholder is entitled to a life estate in the lands of which her husband dies seised, paying a penny on admission; a later wife is not so entitled, nor the first wife, if the husband surrender. The eldest son of a copyholder inherits his father's estate, but if no son, then the eldest daughter; and if neither son, daughter, nor brother, then the eldest sister. A copyholder may fell timber, pull down and alter buildings, without forfeiture; but a widow endowed cannot commit waste to the prejudice of the reversioner. Any copyholder, except a married woman, may lease for twenty-one years, without licence from the lord. The next of kin who cannot take by descent, is the guardian of an heir during minority.

The same customs prevail at *Newnham*.

Brettenham, or Bridgeman, Norfolk.

The customs of all the manors are, that the fines are at the will of the lord, and the eldest son is heir.—Blomefield, *Norf. v. 1*, p. 500. (8vo. edit.)

Bedminster, Dorsetshire.

The custom of this manor is, that a copyholder

ought to nominate his successor, otherwise the land shall escheat.—Carter's Lex Cust. 35.

Bray, Berkshire.

The lord and tenants are entitled to common on the wastes of this manor, and no other. On the death of a tenant there is due to the lord an heriot of the best live beast, and if none, then his best good, and half a year's quit-rent for a relief. On admission or alienation, no fine due to the lord. A tenant dying intestate, leaving no son, but daughters, his estate descends to his eldest daughter; if no child or brother, but sisters, then to the eldest sister. Persons holding estates by tenure of collecting heriot, quit-rents, relief, &c. such person appointed to collect to be allowed his quit-rent for the year he collects, and pasture in Queen lease for fifteen beasts. This manor is ancient demesne.

Brighthelmstone, Sussex.

Copyholds enfranchised.—40 G. 3, c. cxvii.

Builth, Radnorshire.

In this manor a noble is paid by every tenant, at their marriage, to the lord.—1 Show. Copyh. 79; Tomlin's Law Dict.

Bredicot, Worcester.

At the time of the parliamentary survey, the custom of the manor was for the lord to grant three lives in possession, and two in reversion; the widow to have her freebench; a heriot due to the lord upon the death of every tenant in possession, the

best beast, or for the want thereof, the best good.
—Nash, v. 1, p. 121.

Broadwas, Worcester.

The custom of the manor is, for the lord to grant to the copyholders three lives in possession, and three in reversion, and no other estate to be granted so long as one life remains in possession, and one in reversion. The widow has her free-bench. Deads year; executor entering upon the meadow and fallow ground at Candlemas after the death, and upon all the rest at Michaelmas following. Copyholders may sell to one another. Bootes to be used on the manor; one tenant may exchange with another any copyhold lands without licence. Heriots due upon death, forfeiture or surrender.

[It were much to be wished, that some fixed mode of renewing could be agreed upon between the lord and his tenants, so that the latter might cheerfully expend their money in improvements, without the disagreeable apprehension of the lord's coming and collecting the profit. These servile tenures are inconsistent with the present times; and occasion ill-will to the lords, and uneasiness to many honest men. Might not commissioners be appointed, of a superior rank, and more conversant in the law than those for inclosures, to ascertain the value of the lord's interest, and to give him a certain proportion, either in corn or in rent of the estate.]—Nash, v. 1, p. 137.

Burgh Hall, or Berry Hall, Norfolk.

The custom is, that the fines are at the lord's will, and the eldest son is heir.—Blomefield's Norf.

Brigstock, Northamptonshire.

By the custom of this manor, if any man dies seised of copyhold lands or tenements which come to him by descent in fee, his youngest son shall be heir; but if such lands were purchased by him, then the eldest son shall inherit; and in case such son dies without issue, the youngest brother and sister shall be next heir. This manor is antient demesne.—Bridge's Northampton-shire, v. 2, p. 285.

Berdewell, or East Thorp, Norfolk.

The fines are certain at 4 s. an acre, whether land, meadow, or pasture, and no regard to houses or home-stalls, they being included in the content; it gives no dower, the lands descend according to the common law; for those lands that are heriotable, the heriot is the best beast, but if they have no beast, there is no heriot due; they cannot waste their copyhold, nor fell timber (unless to repair their copyhold) without licence. Childway is due to the lord, which is 2 s. 8 d. of every woman, bond tenant, that hath a bastard; and chevage also is paid to the lord, it being a fine for every bond tenant, for liberty to live out of the lordship, and women pay it as well as men, viz. 1 d. a year each head. Bosage is also paid here, which is 1 d. a

head yearly for all cows and great cattle, that feed on the commons ; every ten sheep of the cullet, that laid in the lord's fold, paid 1 *d.* a year. West Fenn common, at Thorpe-end, belonged solely to the manor ; all the tenants were obliged to grind at the lord's mill, and the fishery of all the manors belonged solely to the lord. *Foldage* is a custom of this manor, that every five sheep that go with the lords, whether they be of the cullet or no, if the owners will not let them lie in the lord's fold, but will fold them on their own grounds, they must pay 1 *d.* a year each five ; the bond tenants could not sell any male young cattle of their own breeding, without the lord's licence. — Blomefield's Norf. v. 1, p. 299.

Bewdley, Worcestershire.

A customary tenant may lease for any term not exceeding 1000 years, without licence from the lord, and may devise without surrendering to the use of his will, this being one of those ancient boroughs supposed by Lord Coke to have existed before the statute of wills. The lord farmer is not entitled to any fine, neither in descent, nor on alienation, and only to one shilling heriot ; wherefore the copyhold or customary estates of this manor are not inferior to freeholds. — Nash, v. 2, p. 275.

Braunston, Northamptonshire.

If the widow of any copyholder appears in the lord's court next ensuing the death of her husband, and presents a leathern purse with a groat in it, she can hold his copyhold lands for her life ;

but she is obliged to attend every court day.—
Bridge's Northamptonshire, vol. 1, p. 30.

Battersea, Surrey.

In this manor lands descend to the youngest son ; but in default of sons, they do not go to the youngest daughter, but are divided among the daughters equally.—Lyson's Surrey, p. 21.

Berley, Kent.

Some few copyholds are held of this manor, the rest are free tenements ; almost all the lands in the parish of *Berley* being held of it. The custom of the court-baron is, for the freeholders to pay for a relief the third part of a year's quit-rent upon every death or alienation, and a fine at the will of the lord on the admission of a copyholder.—Hasted's Kent, v. 1, p. 161.

Barnsbury, (Islington,) Middlesex.

The lands in this manor descend to the youngest son. The fines are arbitrary and at the will of the lord, whose custom is to take two years improved rent on a descent, and one year and a half on alienation. No heriots are paid, nor are widows entitled to dower.—Nelson's Islington, p. 102.

Balneth, Sussex.

Copyholds in this manor are of inheritance. The descent is to the youngest son or youngest daughter. The widow is admitted to the whole estate of her husband for her freebench ; and it does not appear that she is subject to forfeiture for inconti-

nence. The fines are arbitrary, within two years value of the land. Heriots are due both on alienation and death. There is no curtesy. The wife is admitted, and holds separately from her husband. The tenants are bound to keep their tenements and farms in repair, for which purpose the lord allows them timber. The lord is entitled to the waste, and with the consent of the tenants, may grant portions of it to copyholders, at a fine and heriot certain. The copyholder cannot cut timber without licence. He may lease for one year or longer with licence; and a fine of 6 s. 8 d. to the steward.

Berkhamsted, Hertfordshire.

One customary tenant may take surrenders out of court. The fine upon descent or purchase is fixed at a certainty, of the yearly value of one year's quit-rent, as the instrument expresseth it. Copyhold lands may be entailed. Copyholders may be tenants by courtesy. Feme copyholders may have dower of the thirds. Tenants may demise lands for three years, without licence, but no longer. The lord's bailiff hath waifs, strays, treasure-trove, felons goods, out of the borough; the bailiff of the borough, those within it, paying the king's high steward for the same.

Balshall, Warwickshire.

Lands of copyholders in this manor descend to the youngest son, and, in default, to the youngest daughter; first wife, for her life, to have all the copyholds her husband died in possession of, doing

no waste ; the second or third wife to have one-third part of the rents, to be set forth by three copyholders ; and every male or female heir, or widow for life, to pay for admittance 1 *d.* Every female heir in possession of copyhold lands, and widows that hold for life, to ask for licence of the lord before they marry, and if no lord, to have two copyholders to witness the asking the licence, and they may marry, and at the next court, on paying 5 *s.* may have the steward's allowance ; and if they marry without licence, they are liable to fine at the will of the lord. If any female heir, possessed of a copyhold, should commit fornication, and be with child, she will not forfeit her copyhold, but she must pay to the lord, to be acquitted, 5 *s.* If any widow, having for life any copyhold lands, commit fornication, she forfeits her estate for life, until she is restored by fine to the lord.

Coggeshall, Essex.

The court for the manor of Great Coggeshall is only a court baron. The court for Little Coggeshall is both a court leet and court baron. These courts have a fine certain, viz. two years lord's quit-rent for freehold, called a relief, and two years lord's rent for copyhold.—Morant's Essex, v. 1. p. 161.

Canonbury, (Islington,) Middlesex.

The copyholders in this manor pay a small fine certain, on death or alienation, with a trifling quit-

rent, and the estates descend according to the custom of gavelkind.—Nelson's Islington, 238.

Clewer, Berkshire.

The lord receives for the customary freehold estates in this manor, on the alienation or death of a freeholder, one year's quit-rent extra. The copyholds are of inheritance; and on death or alienation the fine is at the will of the lord, and also a beast heriot.

Clitherow, Lancashire.

Confirming the copyholds within the honour of Clitherow, 14 Cha. 2. Creating and confirming copyholds of this manor, and Derby, Accarington, Colne and Ightenhill, 7 Jam. 1.

Charles, Kent.

In this manor one-third of a year's quit-rent is paid on every death or alienation.—Hasted, v. 1, p. 222.

Chertsey Beamond, Surrey.

By the custom of this manor, copyholds descend to the eldest son, daughter, kinsman or kinswoman, and the widow of a copyholder has her thirds of such copyholds as her husband dies seised of.—Manning's Surrey, v. 3, p. 221.

Crothorne, Worcestershire.

The customs of the manor are, for the tenants to have two lives in possession and three in reversion; the widow to have her freebench. The best

beast, or in default thereof, the best piece of furniture, to be paid for a heriot upon the death of the tenant who dies seised; the fines to be arbitrary; and the lords to hold court-leet and court-baron.—Nash, v. 1, p. 271.

Croydon, Surrey.

In the survey taken by order of Parliament, 1644, certain customs of this manor are stated, but not correctly. The following are what are presented and recorded on the court-rolls, and observed to this day.—1. One heriot, being the best beast of every copyholder dying seised of any messuage or tenement not lying within the Four Crosses, shall be paid for every such messuage or tenement; and if he hath no quick cattle, then 3s. 6d. for a dead heriot.—2. On death of every copyholder for life, 3s. 6d. for a dead heriot and no more.—3. If any person to whom a right of copyhold shall descend shall die before admittance, one quick heriot is due for every messuage or tenement, and no more, and for want of a heriot, 3s. 6d. for a dead heriot, (this is understood to mean for every distinct copyhold.)—4. If a surrender be made to any person, being no copyholder before then, he is to fine at the will of the lord, and to pay 3s. 6d. for a dead heriot, and no relief.—5. If a surrender be made of a copyhold to any copyholder, then there is due to the lord 3s. 6d. for a dead heriot, and a relief which is to the extent of the rent (that is to say the quit-rent) by the year due to the lord, and no more.—6. Copyholds descend to the youngest son,

and if no son, to the youngest daughter, and so to the youngest in every degree.—7. All copyholders who have an estate of inheritance may strip and waste, but tenant for life may do either.—8. No copyholder may let a lease of his copyhold without licence of the lord for more than three years, and is to give to the lord for every year that he shall have licence to let his copyhold, 6 *d.* and no more.

The quit-rents are collected by reeves, annually chosen at the homage at the general court-baron ; there are eight reevewick lands, that is to say, eight estates, the owners of which are liable to be chosen to serve the office of reeve. They are generally chosen in rotation.

There are also eight beadlewick-lands, that is to say, the owners of which in their turns serve the office of beadle, that is to say, they collect the fines and amerciaments.—2 Manning's Surrey, 538.

An Act passed 6 Geo. 4, c. 47, to enable the archbishop of Canterbury to grant licences for building on copyholds within the manor of Croydon; and to grant licences to demise copyholds, and to fix fines upon admission.

Crowle-Syward, Worcestershire.

The manor of Crowle-Syward belongs to the dean and chapter of Worcester. They hold court-leet and court-baron. By the custom of the manor they grant three fives in possession and three in reversion ; the fines are arbitrary ; the widow hath her freebench ; the tenants are allowed dead's year ; the best beast, or in default of such, the best good

is due to the lord for a heriot on the death of every copyholder dying in possession.—Nash, v. 1, p. 286.

Coulsdon, Surrey.

A court-roll of this manor contains many curious particulars. Amongst them actions of trespass were tried here in 13 Rich. 3, 1390.—Manning, v. 2, p. 448.

Cleeve Prior, Worcestershire.

The dean and chapter of Worcester are owners of this manor. A charter of free warren was granted for this manor, 48 Hen. 3. A court-leet and court-baron are held here, at which the tenants perform their suit and service. The fines are arbitrary. The custom is to grant three lives in possession and three in reversion, though in late years the church only grants three or four lives. The widow has her freebench and deads year. And heriots are due upon death, forfeiture or surrender.—Nash, v. 1, p. 236.

Clent, Staffordshire.

Presentment of Tenants.—We say that the queen's grace ought to have at the decease of every tenant, the which holdeth of her grace, and not of the chief lord of the fee, the best beast for a heriot; and also if the tenant hold of her grace, and also of the chief lord within the same, that then she ought to have the second for the heriot, and the chief lord the best and first choice. We say that our custom is, that if the tenant have but one land,

the lord shall have his heriot at his decease, if he have any, and if he have never so many messuages or lands, he shall pay but one heriot, and the heir shall be brought in by the homage, and be returned tenant by a penny, and to pay for his relief the whole year's rent.—Shaw's Staffordshire, v. 2, p. 249.

Chevening, Kent.

The quit-rents due to the lord of the manor, holden of the honour and manor of Otford in *free socage* tenure, were 14*l.* 2*s.* 7*d.* The rents due to the lord from the copyholders in certain cottages holden of the said manor of Otford, by fine certain, 1*s.* 6*d.* In this manor were two sorts of land, *Yokeland* and *Inland*, both being free land. Yokeland paid a heriot being the best living thing, and the fourth part of the quit-rent; or in lieu thereof, if no goods could be found, 3*s.* 4*d.* in money on a demise or death. Inland paid for a death one full year's quit-rent.—Hasted, v. 1, p. 358.

Clun, Shropshire.

It is the custom of some manors within the honour of Clun, that at the entrance of every new lord of that honour, the tenants shall pay him a certain sum of money, called *mise money*. In consideration whereof they claim to be acquitted of all fines and amerciaments, which are recorded at that time in the court-rolls and not levied, which they call white books.—Blount's Ten. 162.

Cheslehurst, Kent.

Most of the lands are freehold, held of this manor at small quit-rents; and a relief of one year's quit-rent is payable to the lord on every death and alienation.—Hasted, v. 1, p. 1.

Dinevor, Carmarthenshire.

On the marriage of the daughter of a tenant, he pays 10s. to the lord.—Shower's Cop. 151.

Dover Castle, Kent.

Tenant not paying his rent on the day forfeits double, and for the second forfeits treble; a month's guard commuted for 10s.—Cam. Brit. 249.

Dunmow, Essex.

Whoever does not repent of his marriage, and quarrel with his wife within a year and a day, is by the custom of this manor entitled to a gammon of bacon.—Morant's Essex, v. 1, p. 430; Blount's Tenures, 162.

Dutchy Manors.

An Act concerning customary or copyhold lands and tenements, and confirmation of decrees, establishing the rights of copyholders in crown manors.—7 James 1, c. 20.

Diss, Norfolk.

The fines are arbitrary upon every alienation and descent, and on every death the lands descend to the eldest son, or next allied, according to the

course of the common law, and are subject to such forfeitures as the common law doth direct. The copyhold tenants may fell timber without forfeiture on the copyhold lands. The lord's bailiff can take but one penny for each beast's poundage. The tenants cannot dig gravel, sand, turf, &c. on the waste, nor make hemp-pits on Diss Moore, and Cock-street Green.

The tenants can plant upon the wastes against their own lands and houses by the name of an out-run. The lord hath all the strays, he hath no warren, but liberty of hawking, hunting, and fishing in the manor.

The tenants can make steps out of their doors into the streets, and stairs out of their cellars, and also they can set up booyes or props at their windows, and seats at their doors according to custom.—Blomefield's Norfolk, v. 1, p. 14.

Dickleburgh Hall, Norfolk.

The eldest son is heir; the fine is at the lord's will; it gives a third dower. The tenants cannot waste their copyhold houses, nor fell timber upon the copyhold, or waste without licence.—Blomefield's Norf. v. 1, p. 202.

Dickleburgh Rectory Manor, Norfolk.

The copyhold descends to the youngest son, and the fine is at the lord's will.—Blomefield, v. 1, p. 193.

Dartford, Kent.

The tenure of gavelkind and customary mode of

deseent is not altered by the lands being turned into socage. Rob. Gav. (3d edit.) 57. 63. 86. 115.

The tenants within this manor are all free tenants, holding by small quit-rents, and subject to a relief of one third part of a year's quit-rent upon the death or alienation of every tenant.—Hasted, v. 1, p. 218.

Dorking, Surrey.

The widow of a customary or copyhold tenant enjoys all the copyhold estate during her widowhood, paying a fine of one penny.

If a man purchase divers copyholds, which were all heriotable before, he shall pay but one heriot on a death. Freehold land pays no heriot, but only a relief, on death or alienation. Among the sons, the custom of borough-English prevails, whereby the youngest inherits the copyhold. Daughters are co-heirs.—Manning, v. 1, p. 554.

Enborne, Berkshire.

If a copyhold tenant die, the widow shall have her freebench in all his copyhold lands whilst she continues sole and chaste, but if she commits incontinency she forfeits her widow's estate; but if she comes into the next court riding on a black ram, the steward is bound to re-admit her to her freebench.

The same custom is also at Cardingham, Cornwall. Torre, Devon. Kilmersdon, Somersetshire. and Chaddleworth, Berkshire.—Blount's Ten. 144. and Blount's Dict.

Exeter, Devonshire.

The ancient custom of this city is, when the

lord of the fee cannot be answered rent due to him out of his tenement, and no distress can be levied for the same, the lord is to come to the tenement, and there take a stone, or some other dead thing of the said tenement, and bring it before the mayor and bailiffs, and thus he must do seven quarter-days successively; and if on the seventh quarter-day the lord is not satisfied his rent and arrears, then the tenement shall be adjudged to the lord to hold the same a year and a day; and forthwith proclamation is to be made in the court, that if any man claims any title to the said tenement, he must appear within the year and day next following, and satisfy the lord for the said rent and arrears. But if no appearance be made, and the rent not paid, the lord comes again to the court, and prays that according to the custom, the said tenement be adjudged to him in his demesne as of fee, which is done accordingly; so as the lord hath from thenceforth the said tenement with the appurtenances to him and his heirs: and this custom is called Shortford, being in French to foreclose.—Izack's Exet. 48.

Erith, Kent.

There are some few copyhold estates held of this manor, but the principal of the tenants are freeholders at small quit-rents, whose custom is to pay one year's quit-rent as a relief on death or alienation. The copyholders hold at the will of the lord, and the customary fine is two years rack-rent on the death of every tenant, and one year's rack-rent on every alienation.—Hasted, v. 1, p. 197.

Earle's Court, Kensington, Middlesex.

Imprimis. Our custom is upon any change or alienation, to give to the lord of the manor, for a fine, 10s. for every acre. *Item,* We are by our custom free from heriots and mortuaries. *Item,* We are free from thirds and dowers by our custom to our wives. *Item,* We may make a lease of our lands for as many years as we think fit, under 100 years, paying unto the lord of the manor, for every year, 4 d. *Item,* We may sell or let, fell or pull down, and carry away our houses to any other place. *Item,* We may fell or cut down our wood or timber to use at our pleasure. *Item,* We may dig loam, sand, or gravel in the common, to use within the manor, as often as we need. *Item,* We may, upon reasonable business, be absent from the lord's court, being informed, for a day. *Item,* We ought to have a lawful pound to impound cattle that do us trespass, the same to be provided by the lord of the manor. *Item,* Our custom is, that if any tenant die seised, that the youngest is to have the lands, and so to be presented at the next court holden for the lord of the manor, and the tenants to have their dinner and a week's warning to appear at the same court. *Item,* By our custom we ought, at our courts, to choose constables and headboroughs. *Item,* By our custom any tenant may call a court at his own charge, without suit unto the lord. The stewards and tenants to have their dinner provided, and the steward to be pleased for his pains. *Item,* By our custom we make a

surrender of all or any part of our copyhold upon a mortgage, the same surrender to be delivered unto the court, or to the steward of the manor within a year and a day. *Item*, Our custom is not to pay to the lord of the manor any fine upon any mortgage or conditional surrender. *Item*, Our custom is, that we may surrender all or any of our copyhold lands to two of the tenants to the use of any other, or to the use of our last wills, the same surrender to be presented at the next court after the decease of him so surrendering. *Item*, Our custom is, that if in case there happen any claim or alienation of any copyhold lands, whereupon there is any house or tenement, in such case the lord is to have fine for the alienation of such house or tenement, but for the lands only, by the acre, as aforesaid.—Faulkner's Kensington, 599.

East Sheen, Surrey.

The customs of this manor, as to copyholds, are the same as in the manor of Wimbledon, except that on death or alienation 10*d.* is paid for a heriot, and a small relief seldom above 1*s.* 6*d.* and from 8*d.* to 1*s.* 6*d.* for what is called wine silver.—Manning, v. 3, p. 307.

Ellingham Parva, Norfolk.

The customs of the manor are, that the fine is at the lord's will, the eldest son is heir, and it gives no dower. There is no test kept, though 'tis said to be appendant to the manor, and as such was kept about fifty years since. They cannot fell

timber on the copyhold without licence, which by custom hath always been compounded for, at a third part of the clear value.—Blomefield's Norf. v. 2, p. 288.

Eccles, Norfolk.

The customs of this manor are, that the fine is at the lord's will; the tenants cannot waste their copyholds without licence; the eldest son is heir, there is no *leet fee* or common fine, and it gives no dower.—Blomefield's Norf. v. 1, p. 408.

Eltham, Kent.

The tenants are all free tenants, and pay a relief of one year's quit-rent on every death and alienation. The same custom at Paul's Cray.

Frense, Norfolk.

The custom of the manor is, to the eldest son, and the fine is at the lord's will; the *leet* belongs to the hundred, the leet fee being 5*d.* per ann.—Blomefield's Norf. v. 1, p. 148.

Fulham, Middlesex.

The copyholds of this manor are held by a fine certain on death or alienation, and by the custom lands descend to the youngest male issue.

Alteration of tenure of lands held of Bishop of London; 16 Cha. 1.—Faulkner's Fulham, 393.

Fylongley, Warwickshire.

Disposing of copyhold lands; 43 Eliz. and 1 Jam. 1.

Fladbury, Worcestershire.

The lord may grant copyhold estates for three two, or one life. The widow is entitled to her freebench. The executors shall hold the estate for a year. No copyholder can lease without the consent of the lord. Heriot is due from every copyholder dying seised.—Nash, v. 1, p. 447.

Farnham, Surrey.

The estates held of this manor are generally called copyholds, and pass by surrender and admittance; but in the admittance it is only said to hold to *A. B.* and his heirs, according to the custom of the manor, not to hold by copy of court-roll, or at the will of the lord, as in other manors. The fines are certain on the ancient estates: where a new grant is made from the waste it is discretionary, but whatever is then fixed on is never afterwards varied. The copyholder is entitled to cut timber for repairs, or to be used on his estate, but if he cut timber or lease his estate without licence, it is a forfeiture. Of oak or ash cut for sale, the lord takes one fifth; of elm it is not generally taken, though the lord's right to it is always insisted upon. A copyholder can only surrender before the steward of the court, or the clerk of the castle. A surrender made by the husband (even to the use of his will) bars the wife's dower, but if he makes none, she is entitled to the whole estate during her widowhood and living chastely; if, however, she comes to the next court after her

husband's death, and pays half a fine, she becomes tenant for life, and may marry again without forfeiting her estate. The eldest son inherits, and in default of sons, the eldest daughter.—Manning, v. 3, p. 134.

Freshfield, Norfolk.

The fines are at the lord's will, and the copyhold descends to the eldest son; it gives no dower: the tenants have liberty either to erect or pull down houses on the copyhold, at their own pleasure, and to cut down timber on the copyhold without licence, as also to plant and cut down all manner of wood and timber on all the commons and wastes against their own lands, by the name of an out-run or free-bord, and to dig marle or clay, and cut furze and bushes on the common waste.—Blomefield's Norfolk, v. 1, p. 92.

Foot's Cray, Kent.

A court baron is held for this manor, which extends over part of the parish. The tenants are all freeholders, and pay a relief of half a year's quit-rent on every death and alienation. Some of the lands within this manor are held by *heriot service*.—Hasted, v. 1, p. 148.

Gillingham, Dorsetshire.

Vesting certain customary messuages and lands within the manor; 9 Will. 3, c. 32.

Gilsland, Cumberland.

Enfranchise copyhold lands; 12 G. 3, c. 81.

Gloucestershire.

The customs of many manors in this county are, that the executors shall have the profits for one year of the deceased tenant's lands; Carter's Lex Cust. 71. After one year and one day the lands and tenements of felons shall by custom revert to the next heir to whom they ought to have descended; 17 Edw. 2, c. 16.

Goddington, Kent.

The tenants are all free tenants, and pay for a relief one-third part of a year's quit-rent on every death and alienation.—Hasted's Kent.

Great Ellingham, Norfolk.

The eldest son is heir; it is set fine at 3 s. an acre, and there are very considerable barley rents paid in kind, if the lord does not choose to compound for them. The *leet* belongs to the hundred, the *leet fee* being 3 s. 6 d.—Blomefield's Norfolk, v. 1, p. 484.

Garboldesham, Norfolk.

The customs of this manor, and the rectory manor, are these: the copyhold descends to the eldest son, the fine is at the lord's will, the tenants can fell timber on the copyhold, plant and cut down on the waste without licence; it gives no dower, it hath liberty of free-warren, weyf, stray, and all other privileges, except the leet return of writs, office of coroner, clerk of the market, and assize of bread and ale, all which were excepted when it was sold to Sir Drue Drury, who, after

his purchase, sold off his part of the demesnes, and settled the rent-charge of 10*l.* per annum upon that part from which it is now paid by the owner of *Uphall* in *Garboldesham*, who hath the demesnes of the several manors, except those of *Bokenham's* manor.—Blomefield's *Norfolk*, v. 1, p. 263.

Gissinghall, Roydon, Norfolk.

The custom of this manor is borough-English, that is, the copyhold falls by descent to the youngest son; the fine is arbitrary, but in all things else the tenants do as they please.—Blomefield's *Norfolk*, v. 1, p. 47.

Gissing, Norfolk.

A villein cannot divide his tenements, but all shall remain to the eldest issue; and if such issue withdraws out of the homage, he forfeits his tenements. A prepositor and messor to be yearly chosen out of the tenants: the messor to have the custody of the fields, meadows, and woods; he shall sow all the lord's seed, and give an account of all trespasses to the lord, and shall keep a man all seed time to fright the vermin: the messor shall come to the lord's diet or maintenance the first day of harvest, and shall be maintained all harvest time: he is to collect the lord's rents and profits of court, and to warn the labourers, and all others, to their duty, and is to be paid his wages by the tenements that are eligible into that office. The bond-men to fine for their marriage at the lord's will. The tenement of every copyholder, at

each death, is heriotable by the best beast, and if they have no beast they shall give 5 s. The heir of the tenant shall take his inheritance by fine at the will of the lord, and shall give for *layerwite**, 2 s. 8 d. All bond tenants also shall make redemption of their blood, and shall not put themselves under the protection of any other lord. Every heir (according to the custom) is of full age at 14 years.—Blomefield's Norfolk, v. 1, p. 171.

Grimley, Worcestershire.

The customs are the same as Hollowe.—See post, p. 388.

Gestenhall, St. Michael's, Worcestershire.

There is a court-leet and court-baron belonging to this manor, where the tenants are bound to appear, as well leaseholders as copyholders; the freeholders hold by fealty and rent.

The fines upon the copyholders are uncertain; and the copyholders may take for as many lives as they can agree with the lord, there being no custom for any certain number: their fines are arbitrary at the will of the lord. The heriots reserved in money upon the copies; and upon some leases, which usually are a year's rent, payable only upon the death of the tenant in possession. The widow has her freebench.—Nash, v. 2, p. 320.

Ham, Surrey.

The custom is, if any copyholder will sell, the next cleivenor (which is he that dwelleth next

* It signifies a fine paid by the tenant to his lord, for defiling a bond woman.

unto him) shall have the refusal, giving so much as another will ; and he who inhabits on the east part, first, and the south and the west, and last the north, shall be preferred.—2 Brownl. 199.—See *West Sheen*, post, 427.

Haddenham, Buckinghamshire.

Widows not endowable in this manor.

Halifax, Yorkshire.

Hath by custom a peculiar method of proceeding against felons. —See Watson's *Halifax*, 214; *Cam. Brit.* 853, 854 ; 1 *Show. Cop.* 285.

Hindringham, Norfolk.

Copyholders may fell trees, &c. for the necessary repairs of their holdings and buildings, to be cut by the direction of the bailiff and two tenants, which tenants are to be yearly sworn. And for want of proper repairs of houses by the copyholders, after two proclamations in two courts and repairs not performed by the third, within one year, the lord may seize the tenements as a forfeiture, with the copyhold belonging thereto.—*Blomefield's Norf.*

Horton, Suffolk.

Without licence of the lord, the great timber cannot be felled by the copyholders, on pain of forfeiture of copyhold ; fine at the will of the lord.

Highbury, (Islington,) Middlesex.

Lands in this manor descend according to the custom of gavel-kind. The copyholders pay a fine uncertain ; the rule observed is, to take on descent a year and half improved rent of houses, and two years improved rent on land ; and on alienation,

one year on houses, and a year and half on land. No heriots are now demanded. Widows are not entitled to dower of the copyhold.—Nelson's Islington, 137; Lyson's Environs, v. 2, p. 479.

Horneby and Tatham, Lancashire.

Confirming the estates and customs, 3 Cha. 1.

An Act to empower customary tenants to purchase wood on their copyhold tenements, 13 Geo. 3, c. 97.

Hoyden, Yorkshire.

Act to enfranchise copyholds, 18 Geo. 3, c. 55.

Hampstead, Middlesex.

The custom of this manor is, that the lord receives for every alienation or sale of an estate in this manor, one year's value thereof and no more. The like custom upon the admittance of the heir of any customary tenant; and the tenants of the manor may dig and carry away as much gravel, land, and turf as they have occasion for the repairs and accommodation of the lands, houses and gardens, provided they dig in such places as are convenient, and for the repairs of the highways and roads within the parish and manor of Hampstead.—1 Ca. and Opinions, 171; 2 Starkie's Rep. 470.

Highworth, Wiltshire.

This parsonage, rectory, or manor is held of the prebendaries of Sarum for three lives, with benefit of renewing when any life drops. The copyhold tenements of the said rectory, &c. are heriotable, and pay the best goods upon the several deceases of the several tenants, and their widows enjoy their widows estates. The lords or lessee of the said rectory,

&c. may grant estates for three lives by copy, according to the custom of the said rectory, &c. The lessee for the time being may fill up all copyhold estates during his term.—1 Show. Cop. 298.

Hollowe, Worcestershire.

The customs of this manor are fines arbitrary ; heriot due upon the death of every copyholder for every messuage, the best beast, or for want thereof the best goods : the widow has her freebench : heriot due upon forfeit or surrender. Likewise it is affirmed by oath, that every tenant by copy or lease may cut down and fell any timber trees growing upon their several messuages and tenements at their will and pleasure. The same customs at Grimley.—Nash, v. 1, p. 473.

Hartlebury, Worcestershire,

The customs of the manor of Hartlebury are, to grant one life in possession, and three in reversion, and to alter and change at the will of the lord ; when three lives have dropped the lord may grant the estate to whom he pleases, though the tenants claim the first offer.

Upon every surrender, and upon the death of every tenant in possession, and upon every marriage of a widow, there are due two heriots, viz. two of the best beasts such tenant died possessed of, or in default of such beast, two pieces of the best goods, such as plate, feather beds, brass, &c. The widow may claim her freebench *dum sola et casta est*. The rent days are Michaelmas and Lady-day. The copyhold estates are subject to forfeiture. The

copyholders may by custom fell timber, or any other wood growing on their premises, for repair of their tenements, and hedge-boot, plough-boot, cart-boot, and fire-boot, without licence of the lord, and may dig stone, if they have any in their lands, in like manner.

The copyholders have a right of common in all commonable places, and waste within the manor, and better and larger than the freeholders; viz. sixty sheep for a yard-land and other cattle without stint, and common of estovers, which the freeholders have not, nor any common at all in the heath, nor in Lynam in the lord's waste. The other customs and services are such as are expressed in their copies; viz. fines, heriots, fealty, suit of court from three weeks to three weeks.—Nash, v. 1, p. 569.

Herefordon or Harvington, Worcestershire.

The custom of the manor is for the lord, who is the dean and chapter of Worcester, to grant three lives in possession, and three in reversion. The widow to have her freebench—a deads year, fines arbitrary.—Upon death of every tenant in possession heriot due.—Nash, v. 1, p. 576.

Hackford Hall, now Herling Thorp, Norfolk.

The customs are the same now (1736) as other manors in this county, *but were different formerly*, for in 1364 the copyhold descended to the youngest son, and it gave a moiety dower. It was then fine certain at 4s. an acre. The bosage, faldage, and chevage, were the same as in the other manors,

but the childwite was not certain, but at the lord's will. They could sell all manner of beasts that they bred; and this custom prevailed here, that every copyholder that married paid the lord a bolster, sheet, and pillow, or fined for them, except the tenants called Molmen, which were not subject to this custom.—Blomefield's Norf. v. 1, p. 300.

Hardwick, St. John's, Worcestershire.

The lord commonly grants one life in possession and three in reversion; the widow has her freebench; fines arbitrary.—Nash, v. 2, p. 310.

Himbleton, Worcestershire.

The custom of the manor is, for the lord to grant three lives in possession, and three in reversion,—the widow to have her freebench,—a deads year. In all the woods of Himbleton, the owners thereof may keep them enclosed for seven years, after they are fallen, and at seven years end the woods may lie open to the commoners, there to depasture with their cattle for the space of three years, and then to be fallen again. Here is a court-leet and court-baron.—Nash, v. 1, p. 579.

Hocham, Norfolk.

The lord has the goods of every *felo de se* within the manor. No tenant can waste his copyhold. Women are dowable for a moiety of the copyhold of which their husbands are seised during the coverture. The husband is tenant by curtesy of his wife's copyholds, if they have issue. The tenants give for a fine upon every alienation, whether by

death or surrender, according to the ancient custom of this manor, 12^d out of every mark, of the value and price of their lands and tenements by them taken up, and such fine is called *mark shilling*. One copyhold tenant can take a surrender and another witness it. The lands descend to the eldest son; and the manor extends into *Breccles, Illington, Tottington and Thomson*.—Blomefield's *Norf.* v. 1, p. 465.

Halsted, Kent.

The manor of Halsted extends over part of Chelsfield. The lands are held of it by small quit-rents. The relief paid by the tenants on every death or alienation is the third part of a year's quit-rent, and a heriot of the best living beast, or otherwise 3*s.* 4*d.* for a dead heriot.—Hasted, v. 1, p. 321.

Hadham Magna, Hertfordshire.

The fines upon admission are one year's quit-rent. There is a custom, if any man marries a maid and dies intestate, the widow enjoys her freebench for life, and after her the youngest son.

Horton Kirkby, Kent.

Most of the lands within the parish are held of this manor at small yearly quit-rents, and the custom is for the tenant to pay two years quit-rent on every death or alienation.—Hasted, v. 1, p. 562.

Hewitts, Kent.

This is a freehold manor, having a court-baron: the tenants hold of it by annual quit-rent, and a relief upon every death or alienation, which is the

fourth part of a year's quit-rent and a heriot, being the best live beast belonging to the tenant.—Hasted, v. 1.

Little Orpington, alias Mayfield, Kent.

The tenants are freeholders, and on every death and alienation pay a relief of a third part of one year's quit-rent.—Hasted, v. 1, p. 136.

Iden, Sussex.

On the death of a tenant the best beast, if seized, is due to the lord.

Islington.

See St. John of Jerusalem, Islington, post, p. 420.

Isle of Man.

The eldest daughter (if there be no son) inherits here, though there be more children. The wives, through the whole island, have a power to dispose of, by will (though their husbands be living), one moiety of the goods, moveable and immoveable, except in the six northern parishes, where the wife, if she has had children, can only dispose of a third part of the living goods. A widow has one half of her husband's real estate, if she be his first wife, and one quarter if she be the second or third; but if any widow marries or miscarries, she loses her right in her husband's estate. A child got before marriage shall inherit, provided the marriage follows within a year or two, and the woman was never defamed before with regard to any other man. Executors of spiritual men have a right to the year's profits, if they live till after twelve of

the clock on Easter-day.—Cam. Brit. 1455 ; see also Johnson's Isle of Man, 34, 129.

Isleworth, Middlesex.

An ancient custom prevails in this manor, that the tenants should pay to the lord a certain sum of money, amounting to eight marks, called the Dyseyne, over and above the customary rents. This sum was raised by a tax levied in an equal proportion upon all the male inhabitants of fifteen years of age and upwards ; lands in this manor descend according to the strict custom of Borough-English.—Lyson's Midd. p. 455.

Jersey.

Estates in this island, both real and personal, are equally divided among the sons and daughters.

Keymer, Sussex.

Enfranchising copyholds ; 5 Geo. 4, c. 36.

Kemsey, Worcestershire.

The customs of the manor are to grant one life in possession, and three in reversion. That the wife have her widow's estate admitted by the steward at the next court, for one penny. That the executors shall have the deads year. No tenant in the manor of Kemsey ought to be arrested in the corporation of the city of Worcester for any debt, without warning thereof to be given to the serjeant three weeks before. And it is conceived the tenants of Kemsey ought not to pay toll for their corn or cattle there sold. The tenants are to take plough-bote, and fire-bote, and pay heriots.—Nash, v. 2, p. 22.

Kenton, Devonshire.

The customs of the manor are, that if the issue of any of the tenants hold their tenements one after the other, three descents, they may claim the inheritance of the tenement.

Kenninghall, Norfolk.

The customs of this manor, and the rectory manor, are the same, viz. the copyhold descends to the youngest son, the fine is certain at 6*d.* an acre, they give dower, and the tenants can waste their copyhold houses, fell timber, plant, and cut down wood and timber on the waste against their own lands without licence.—Blomefield's Norfolk, v. 1, p. 220.

Kennington, Surrey.

Lands in this manor descend to the youngest son; and in default of sons, are divided equally amongst the daughters.—Lysons, v. 1, p. 235.

Kensington.

See Abbots Kensington and Earles Court.—Ante, p. 378.

King's Swinford, Staffordshire.

Office of forester pays 40*s.*, and five-pence on going out. Every tenant on his decease, for every tenement he died seised of, pays his best beast for a heriot; and half bees and half swine, and a whole year's chief rent, for relief. If two tenements, pays two beasts, and the other as before. The wife of every deceased tenant is entitled to one-half of the land within the manor her late

husband was seised of in the time of marriage, and died seised of, unless she bar herself by her own act. If man has issue that is heard to cry, by woman copyholder, he holds as tenant by curtesy. If cattle are impounded within the manor, two copyholders may release the same, promising to answer the action. Every surrender is 2s. 6d., examination. 2s. 4d., for giving seisin four-pence, and for recovery to agree with the steward; and for every surrender, the tenant must agree with the lord at his will, who usually takes half a year's profit, sometimes less. Any person may dig turf, and cut heath on the wastes. Every copyholder may lease his tenement to any person for 99 years, from the day of the date of the lease, and may get mines, &c. and stock trees. If the copyholder commit felony, he shall lose all his goods and his lands but for one year and one day.—July 2, 1655. Juror's answer to articles presented to be inquired of at the petition of Andrew Bradley, (as follows): That copyholder may demise, not exceeding 99 years; that if copyholder shall demise for any term of years warranted by custom, and shall afterwards, during such lease, make another demise or lease of the same lands before demised, such said lease not exceeding 99 years from the date thereof, may be good for the rest of the years yet remaining of the former lease, and will take effect when the former lease endeth; but such second lease must begin so as not to exceed 99 years from the date hereof, else it will be void.

If a lease for 99 years be expressed to commence

at a time to come, any longer than from the date thereof, it is not warranted by the custom, because it exceeds 99 years, and so is void ; but it may take effect long afterwards, as above. The heir of a copyholder, or any person to whom he shall surrender his copyhold, may demise the same, whereof the widow is endowed or endowable, and the lease is good for the whole land during the widow's estate ; but it cannot hinder her dower, nor take effect in possession for that whereof she is endowed, till her dower determine.—Shaw's Staffordshire, v. 2, p. 226 ; 2 W. Black. 944.

Littlecott, Wiltshire.

Every freeholder to make his appearance at the court yearly ; without lawful excuse, to be amerced. Every customary tenant to make his appearance at the court-leet, when summoned ; without lawful excuse, to be amerced.

Every customary tenant to grind his corn at the mill belonging to the lord, so as the miller use him honestly.

All the tenants, yearly, at the feast of St. James, to clean the watercourse from the lord's mill, every tenant against his own ground ; if default, to be amerced.

On death, surrender or forfeiture, of any tenant, the bailiff, &c. and homage to view his tenement ; and if any dilapidations, to present them at the next court.

Tenants by copy have three lives, the man, his wife, and two others. If husband dies, the wife named in the copy for term of life may marry

again, and hold, during her life, the tenement ; but if the wife dies before her husband, and he marries again, the second wife, by custom, can have but her widowhood.

" If any be taken tenant in any tenement within the lord's court, by the steward appointed in the lord's absence, the tenant so taken shall quietly enjoy the term specified in the copy.

Any one taken tenant in any tenement by the steward, in presence of the homage, by consent of the lord, and having a copy, but not signed by the lord, the tenant shall enjoy the same.

No tenant can cut any ash or oak growing on his tenement, without licence from the lord, upon pain of forfeiting his tenement.

Every tenant may use elms growing on his tenement, upon the repairs of his tenement, without licence.

Every customary tenant may cut turf, fern and furze, upon the waste, for his use, but not for sale, and to pay for a licence, to the lord, sixpence for fernage.

No tenant to dwell from his tenement for one year and a day, without licence from the lord, or his estate will be forfeited.

The tenants may not sue one another out of the court, without licence from the lord. The form of the pleas of the court are an action of debt, or action upon the case, of trespass, in damages under 40 s.

The tenants, at the desire of the lord, to attend to the boundaries of the manor.

All customary tenants to have a proper supply of fire-boot, frith-boot, and stakes, at Holyrood-day and Michaelmas, paying to the lord, at Michaelmas, sixpence ; if refused, they may take it themselves, in the presence of two witnesses.

All customary tenants to have common of pasture for cattle and sheep in Heath-hill, West-hill, and Horde-moor ; and for such pasture they must drive Horde-moor yearly, and bring all cattle found there, the drift to be delivered to the farmer at Court-house.

If any stray sheep or cattle come on the manor for a year and a day, without claim of the owners, the tenant who has the keeping shall at Michaelmas pay 6 *d.* for each sheep, and keep it ; and for other cattle, being in their keeping, to remain for the use of the lord, if proved strays.

Every customary tenant may till on the wastes and commons, by the direction of the bailiff, paying 6 *d.* to the lord at Michaelmas for every acre tilled ; after two crops had, to remain in common again.

Every customary tenant to pay his rent due to the lord within fifteen days after Michaelmas and Lady-day.

The bailiff or tything-man to appoint two proper men every year, to be sworn by the steward, to assess and demand all amerciaments presented by the homage against any free suitor or customary tenants.

At the death, surrender or forfeiture of copy-holds within the manor, the bailiff, tything-man, homage and tenants, shall take for the use of the

lord, by way of heriot, the best living beast ; if no beast, then the best dead goods.

Every copyholder, being principal taker, having in his copy two or three lives, may (by consent of the lord) exchange any life, or all, so that none of the reversions of the principal taker at first have been chargeable with the payment of the fine, or any part.

The lord cannot inclose any of the commons without consent of the homage.

Lambeth, Surrey.

By the customs of this manor, a year's quit-rent is paid for a relief on the death of the freeholder, but not on alienation, and no heriot is paid. When a new freeholder does his fealty, he is to pay one penny to the steward, and no more. As to the copyholds, the best live beast is due for a heriot on death, but if there is no such, 3 s. 6 d. is paid for a dead heriot. If a copyholder surrender a heriotable copyhold to the use of another for term of his life, after the death of the then copyholder, 3 s. 6 d. is to be paid for a heriot ; but at the death of the tenant to whom the estate for life was surrendered, none is due. If one who is a copyholder purchase other copyholds, he is to pay a year's quit-rent of the new copyhold for a fine. If one who is not already a copyholder purchase a copyhold, the fine is at the will of the lord, but no relief is due. On death of a copyholder, if the estate descend to the heir, the fine is a year's quit-rent, and no more. The youngest son is heir ; daughters take equally. Surrenders must be made to the steward in open court, or to him out of court, if he be steward by patent, or else

to two copyholders. All surrenders delivered out of court into tenants hands must be presented by those tenants to the steward at the next court, on pain of forfeiting their own copyholds. All copyholders may strip and waste on their copyholds. No copyholder may lease his estate for more than three years, without the lord's licence, on pain of forfeiture.—Manning, v. 3, p. 471.

“An Act to enfranchise and grant part of the glebe and waste lands of this manor ;” 18 Geo. 3, c. 32.

An Act passed 6 Geo. 4, c. 47, to enable the Archbishop of Canterbury to grant licenses for building on copyholds within the manor of Lambeth ; and to grant licenses to demise copyholds, and to fix fines upon admission.

Longload, Somersetshire.

Freebench is incident to copyholds for life as well as in fee, and is forfeited by incontinence or second marriage.—Jenk. Cent. 7.

Lindridge, Worcestershire.

The fines of the several copyholders within this manor, upon descent or alienation, are double their yearly rents, and treble if the person be a stranger.—Nash, v. 2, p. 90.

Longhope, Gloucestershire.

The copyholds are held at a small reserved rent, and on every surrender one year's value is paid to the lord. The property is not lost by failure of surrender, or want of heir. This manor is ancient demesne.—1 Show. Cop. 423.

Lodebrook, Warwickshire.

In this manor, each tenant pays swarf-money yearly, which was one penny halfpenny; it must be paid before the rising of the sun; the party must go thrice about the cross, and say 'the swarf-money,' and then take witness, and lay it in the hole; and when he hath so done, he must look well that his witness do not deceive him, for if it be not paid he giveth a great forfeiture, thirty shillings and a white bull.—Blount's Ten. 156.

Macclesfield, Cheshire.

Creating and confirming lands to be copyhold;
1 Cha. 1.

Marden, Herefordshire.

By the custom of this manor, copyhold tenants may fell timber.—Hobart, 6. (See *ante*, 355.)

Mildenhall, Cambridgeshire.

The customs of this manor enable a feme covert to pass by her will copyhold lands which have been surrendered to the use of the wife's will by the husband and wife, the wife being examined by the steward separate and apart from the husband, and consenting.—*Doe v. Bartle*, 5 Barn. & Ald. 494.

Meldinghall, Norfolk.

The custom of this manor is descent to the eldest son, and the fine at the lord's will. The leet belongs to the hundred of Burston, to which it pays 2s. leet-fee.—Blomefield Norf.

Millan, Norfolk.

The custom of this manor is, if any copyholder will sell his land, and agree upon the price, at the next court, when a surrender is to be made, the next of his blood, and if he refuse, any other of his blood may have the land.—*Rowles v. Mason*, 2 Brownl. 199.

Monkton, Kent.

The custom of this manor was, that after every alienation of any parcel of land held of this manor, the lord should have a year and a half rent for a fine: it was adjudged an unreasonable custom to claim a fine upon an alienation for life, because the tenure of the lands is not altered by such an alienation, for the reversion continues as it was before the land was aliened.—*Holland v. Lancaster*, 2 Vent. 134.

Molland and Dean Fee, Kent.

The court-baron is held under a tree. The quit-rents amount to 3*l.* 8*s.* 9½*d.*—*Hasted's Kent*, v. 1, p. 533.

Mundane, Little, Hertfordshire.

The fine upon admission one year's quit-rent.

Newenham, Worcestershire.

This manor hath many freeholders that pay chief-rents, and who usually pay, upon descent or alienation, by way of relief, double their chief-rent. The fines of the several copyholders, upon descent or alienation, are double their yearly rents; and treble if the person be a stranger.—*Nash*, v. 2, p. 96.

North Cray, Kent.

In this manor is a court-leet and court-baron. In the court-baron the tenants are freeholders at small quit-rents, and a relief of one third of a year's quit-rent is due on every alienation or death.—Hasted's Kent, v. 1, p. 154.

North Elmes, Devonshire.

The homage may make bye-laws for the better ordering of their cattle.—3 Leon. 3.

Orleton, Herefordshire.

The widow of a copyhold tenant is admitted to her freebench at the next court after her husband's death.

Petersham, Surrey.

See West Sheen, post, 427.

Paul's Walden, Hertfordshire.

There is a custom of this manor, that no surrender of copyhold estate shall be good but what is taken by the lords or their steward, unless he that would surrender is *in extremis*, and then he must do it to a copyholder sworn to take such surrenders. If the sick man recovers, his act is void.

The widow of a copyholder has her dower in the lands he dies possessed of.

Pollits, Hertfordshire.

The fines at the will of the lord. No timber to be felled without the lord's licence.

Pannington.

By the custom of this manor an infant of the age of twelve years may surrender.—Tothil Rep. 109.

Pencarne, Monmouthshire.

There is belonging to this manor divers tenants, who hold divers messuages, &c. by several tenures, viz. : freeholders who hold their land in socage, and according to the course of common law ; tenants by letters patent, and customary tenants, whose lands they hold by the rod ; which lands, on the death of any such customary tenant dying seised, do descend to the youngest son, and for want of issue male, to the youngest daughter of the first marriage ; and that at the death of such customary tenant, the widow is to have no more than her pure widowhood's estate.—1 Cases & Opinions, 207.

Prebend Manor, Islington.

The custom is, a fine certain upon every alienation or descent. The customary tenants are copyholders of inheritance.

Perveth, Cardiganshire.

2. The lordship is divided into four divisions.
3. All royalties belong to the king.
4. The court-leet and law-day is kept twice a year, and the court-baron every fortnight.
5. At a court-leet within a month after Michaelmas a major or prepositor, and a beadle, is elected for the ensuing year, to collect the king's chief rent.
6. At the leet-court, a month after Easter, a constable is appointed.
7. Also that the key of the common pound is kept with the constable or tything-man.
8. Also that the tenants within the manor may not sue one

another out of the court of the manor in debt or damages under 40 s. without licence from the steward. 9. Also every freeholder whose lands join the common is to keep up the boundary hedge. 10. Also that it is customary for every tenant and inhabitant to turn commonable cattle and living stock on the common and king's waste under care of a shepherd. 11. That no cattle shall be taken in keeping by any cottager from persons that live in another lordship. 12. Also, that every tenant of the manor may cut turf, wood, &c. but cannot sell. 13. Also any tenant parting with his tenement at May-day pays half the chief-rent due upon the tenement for that year. 14. Also all estrays of sheep and other cattle belong to the lord. 15. Also that a pair of stocks be kept for felons, rogues and sturdy beggars. 16. Also that there was a rent-roll of the king's quit-rents made in former times, and kept in court, where the beadle and prepositor might have recourse in case of dispute—Meyrick's Hist. Card. 568.

Pirbright, Woking, Surrey.

Every tenant and copyholder shall pay unto the lord, upon every alienation, or death of the tenant, his best beast for an heriot, and shall fine at the lord's will. All and every tenant of this manor may common with his cattle in the commons of this manor and in the forest *sans nombre*. If any tenant fell any timber-tree upon his copyhold without assignment, he shall forfeit his estate. The tenants must have the timber for the amending of their houses by assignment. The eldest son shall

inherit his father's copyhold lands; but the father may surrender to the use of which child he listeth. If a surrender be delivered into the hands of any tenants, and they present it not within one year and a day, or at the next court of the lord's, the surrender is void. The widow of any tenant dying seised of any copyhold land, shall have no widow's bench, nor any part of the husband's copyhold, unless she be fined in with her husband in his copy. If there be no son, the eldest daughter shall have the copyhold.—Manning's Surrey, v. 1, p. 150.

Paris Garden, Surrey.

Was in the crown until about the 20th year of Queen Eliz.; she gave this manor to Lord Hunsdon.—The copyholders of this manor purchased their estates, but meaning that they should continue to be held by copy of court-roll, they took a demise from the lord to trustees for a term of 2,000 years, of all the messuages, lands, &c. copyhold in the parish of St. Saviour, parcel of the manor of Paris Garden, held thereof by rents amounting in all to 8*l.* 5*s.* 4*d.*; the said rents and the court-baron and the profits thereof in Southwark or elsewhere in Surrey, being copyhold of the said manor. They also took a grant to other trustees of the freehold of those copyhold estates. On the same day the lord of the manor conveyed to Thomas Cure the elder, of Southwark, Esq. the lordship and manor of Paris Garden, the mansion-house of the lordship and lands above-mentioned, but there is an exception of the copyholds and court-baron so granted as above. The copyholds with the court-baron

being thus separated from the manor, remain in the same situation to this day. The trust is from time to time renewed, and the copyholders surrender and are admitted at courts-baron as in other manors, except that they pay no quit-rents, heriots or fines. The conveyance is short and simple, with the full benefit of a register, and the estates sell at a better price than freeholds. The eldest son is heir. The bailiff has an ebony rod, the ends of which are enclosed in a silver plate, on one of which are the arms of England surmounted with a crown, between the letters E. R. and under them is inscribed, "The Rodd for surrender of Copyholds in the manor of Paris Garden." The inhabitants of this manor claim a right of voting at the election of members of Parliament for the borough of Southwark, but the right is denied, and it does not appear that the question has ever been legally decided. Some of the copyholders have claimed to vote at the election of members for the county, alleging that they have an equitable freehold in their trustees, and therefore are to be considered as freeholders. Their votes have been received, but as they still hold by copy of court-roll, it admits of question how rightly, 7 & 8 W. 3. c. 25. s. 17.—Manning's Surrey, v. 3, p. 530.

Plumstead, Kent.

The manor extends over the parish of Plumstead, and part of that of East Wickham. A court-leet and court-baron are held for it. The quit-rents are considerable. All the tenants are free-

holders, and the custom is to pay one year's quit-rent upon the death or alienation of each tenant.—*Hasted*, v. 1, p. 181.

Pollington, Yorkshire.

If a copyholder dies seised of lands, having no issue male but daughters, and does not surrender it to them in his life-time, the same shall escheat to the lord of the said manor, and the daughters shall not inherit.

Rotherfield, Sussex.

To enable the Nevills to sell copyhold lands ; 43 Eliz. & 1 James 1.

Rannes, Lancashire.

Confirming tenants and copyholders of the manors of Rannes, Irchester and Rushden ; 14 Cha. 2.

Richmond, Surrey.

Lands in this manor are held by the rod, or copy of court-roll, and descend to the youngest son ; or in default of sons to the youngest daughter. The same customs prevail in the manors of Peter-sham and Ham.—*Lysons*, v. 1, p. 321, ante, 357.

Rowdham, Norfolk.

The customs of this manor are, that the eldest son is heir, and the fines are at the lord's will. The leet belongs to the lord of the hundred.—*Blomefield's Norfolk*, v. 1, p. 433.

Rodely, Gloucestershire.

Certain tenants of this lordship pay to the lord of the manor a rent called Pride Gavel, as a duty

and acknowledgment to him for their liberty and privilege of fishing in the river Severn for lampreys. And in the same lordship there is another rent called Sand Gavel, which is a payment due to the lord for liberty granted to the tenants to dig up sand for their use.—Taylor's Gav. 112.

Rowley Regis, Staffordshire.

Copyholds are demisable by lease for 99 years without licence, and are descendible as freehold. Wife entitled to half as her dower. Fine on every surrender, two years chief-rent. No heriot due.—Shaw's Staff. v. 2, p. 239.

Reygate, Surrey.

By the custom of this manor any tenant may fell timber trees upon his copyhold without licence from the lord, provided such timber be employed about building and repairing his copyhold; and likewise, if a tenant dieth seised of several freehold lands and tenements, there is but one heriot due to the lord; and if a tenant dieth seised of several copyhold lands and tenements, the lord shall have but one heriot. Copyholds enfranchised; 13 G. 3, c. 15.—Manning's Surrey.

Slape, Dorsetshire.

According to the customs of the manor of Slape, no tenant can be admitted to an express estate of inheritance. The largest estate to which tenants are ever admitted, is to two for their joint lives and the life of the longest liver of them. But any tenant admitted for his life has a power to nomi-

nate one or two persons to succeed him, "jointly and successively," as tenant or tenants; and that right of nomination may be exercised either by surrender in open court, or out of court, by writing executed in the presence of two tenants of the manor, who must attest the same; and the form of such surrender or nomination is to the surrenderee or nominee "and his assigns for ever; or if two, to them "and their assigns for ever." A nomination of this kind need not be presented to the steward of the manor, or at the court, before the nominee applies to be admitted. It was also alleged to be a custom of the manor, that a surrenderee, before he has himself been admitted, may surrender in favour of another person, who is entitled to be admitted, although the original surrenderee has never been admitted, provided he pays the double fine. Where there has been no surrender or nomination, the heir at law of the last tenant is entitled to be admitted, subject, however, to the right of the widow to the estate during her widowhood. The fine payable by a widow on admittance is one penny; that payable by the heir at law or nominee, in respect of the estate in question, 10*l.*—1 Sim. & Stu. Rep. 24.

Sunbury, Middlesex.

Lands within this manor descend as by the common law, except that in default of male issue or heirs, the eldest daughter or the eldest of any female heirs in the same degree of consanguinity, inherits. A customary tenant purchasing customary lands within the manor, pays no fine, nor does

the heir at law of such tenant at his admission ; but if lands are bequeathed to any other than the heir at law, a fine of alienation is paid. The tenants services due formerly in this manor, seem to have been commuted for certain sums of money, called Work Silver.

Sunninghill, Berkshire.

For each customary freehold estate in this manor the lord receives, on death or alienation, one year's quit-rent extra.

Sedgley, Staffordshire.

The custom is, if a copyholder make a lease without licence for one year, and dies within the term, it shall be void against the heir.—Lit. Rep. 233.

A free copyholder of this manor may demise for 99 years, and get mines without licence ; that he inherits according to the rules of common law, and is fined on every surrender one year's chief-rent. A base copyholder cannot demise but for three years, or get mines without licence, if not for his own use, and he forfeits land broken up. The messuage or tenement cannot be held against the son for one year after the father's death, as he is bound to serve the office of beadle and reeve. The estate of the base copyholder for the first descent only next after a surrender, goes to the eldest son, and afterwards to the youngest. If no son, to daughters equally ; if no issue, to the youngest brother ; if no brother, to sisters equally in nature of borough-English ; if neither brother

nor sister, to the youngest kinsman or kinswoman. Dower, one third of both tenures ; dowress to come into court and be admitted, and pay her fine, otherwise she cannot claim it.—Shaw's Staff. v. 2, p. 321 ; 5 Term Rep. 26.

Stockland, Dorsetshire.

Within this manor the custom is, that the widows of copyholders for lives shall enjoy, during their widowhoods, the customary lands whereof their husbands died seised,—Hob. 181.

Shelwood Leigh, Surrey.

Copyhold estates descend to the eldest son, and if no son, to all the daughters equally ; the wife to have one third of the copyhold which her husband shall die seised of for her life, if she claim it at the next court ; heriot, the best live beast on death of copyholder or freeholder, and on alienation of copyhold, if the whole sold, but not if he remain a copyholder.—Manning, v. 2, p. 180.

Shilton, Leicestershire.

By the custom of this manor the lords are seised in trust for the copyholders, for the purpose of preserving a register, the same as in the manor of Paris Garden, Surrey.

Stoke Prior, Worcestershire.

There is a court-leet and court-baron held here for this manor at the usual times. The customary tenants are copyholders of inheritance ; the lands are, and time out of mind have been, granted unto

the copyholders, *sibi et suis secundum consuetudinem manerii*. The next heir to any copyholder is to pay, upon the death of his ancestor, one year's customary rent to the lord. A heriot or part of a heriot is due to the lord upon the death of every tenant dying seised of any parcel of land or tenement within the said manor which are heriotable, and every half-yard land ought to pay a heriot, the best beast; or for want thereof, the best goods of the tenant dying seised; and those that have less than half a yard-land, to pay a proportional part thereof, to the sixteenth of a yard-land. And further, that the lord hath usually taken alienation of any lands for fine and heriot about a fourth part of the yearly worth and full improvement of the lands so aliened. There are 44 yard-lands within the manor aforesaid which are heriotable. Likewise that the widow of every copyhold tenant, whose husband died seised of a copyhold estate, shall hold and enjoy the moiety of the lands her husband so died seised of, and the better part of the house during her life, so long as she keeps herself a widow; but if she marry again, then to lose the benefit of her house and fire-bote, and to receive only the rent of the heir if they can agree; also the difference between them to be decided by the homage at the next court.—Nash, v. 2, p. 380.

Sedgeberrow, Worcestershire.

The custom of the manor is, for the lord to grant two lives in possession and two in reversion: the widow to have her freebench: the executor has

the deads year : a heriot due upon death, forfeiture, or surrender of every tenant in possession : fines arbitrary.—Nash, v. 2. p. 341.

Shipston, Worcestershire.

The lords have granted to the copyholders two lives in possession, and three in reversion. The fines are arbitrary. The widow has her free-bench : heriot due to the lord upon death, the best beast, or for want thereof the best goods, or such sum of money as is expressed in the tenant's copy. If the tenant die before Twelfth Day, the reversioner shall enter upon the field which is to bear pease, and upon the fallow, and upon all lot meadows and beast pastures presently upon death ; and upon the dwelling-house and residue of the copyholds at Michaelmas following. If the tenant die after Twelfth Day, the executor shall have the benefit of the whole estate during one whole year, and likewise the benefit of sowing wheat and barley the next year. The lands to descend to the next of blood ; and if the next taker come not in, being called upon at three several courts, the lord may dispose of his lands.—Nash, v. 2, p. 429.

Shelfhanger, Norfolk.

The customs are these, the eldest son inherits, they can fell timber, pull down, build up, plant, and cut down on the copyhold and waste, without licence, but the fines are at the lord's will.

The leet belongs not to the manor, but hath passed with *Diss* hundred, the lord of which keeps

it at this time, and hath 2s. *leet fee*.—Blomefield's Norf. v. 1, p. 124.

Semere, Norfolk.

The customs of the manor are these, the fines are at the lord's will. The copyhold descends to the youngest son. It gives no dower. The tenants cannot fell timber, nor waste their copyhold houses without licence. In Bromehall manor every free tenant upon purchase of any freehold, pays a year's free rent to the lord, as a customary relief.

Southwell, Nottinghamshire.

First, the tenants are bound to lead great timber from Hexgrave, Norwood and Hockerwood, to any manner of building that the lord will make in his manor-place at Southwell, and to his mill, and to no other place, and to have for leading of every load—*ob. qr.*

Item, Upton is bounden to lead timber to Upton Mill, giving them reasonable warning.

Easthorpe is bounden to lead timber to the malt mill of Southwell, Westgate, Westhorpe, Eadingley, Hallam, and other the lord's tenants to lead timber to the over mill and malt mill.

Also the tenants must lead firewood to the lord's hall, chamber, and kitchen, from Hexgrave, Norwood, and Hockerwood, and no further, and to have for every load leading—*ob. qr.* and a fire-stick home with them.

Also the greave of the lord's costs must cause Darsing Meadow and Easthorpe Meadows to be

mowed and cocked, and to have for his labour one load of hay.

Also every meest within the lordship, that bounds upon the lord, shall find a hay-maker one day; and every toft half a day, and no more.

Also the lord's tenant's duty is to lead the hay to the manor-place at Southwell, and no further; every man after their oxgangs, every oxgang a load of hay; and to have for every load leading—*ob. qr.* and a reasonable bottle of hay to have with him; and if the lord have let the hay from himself, then they are not bound to any other.

And the beadle for summoning the lord's tenants to lead it, a load of hay, and the steward that keeps the lord's courts, a load of hay.

Also the greave all the ——— must make the steward three dinners of the lord's costs, at the three great court-leets, and to have for every dinner allowed him 5 s. and the greave must gather the rents of the lord's demesne lands, having for his labour 5 s. or a coat price 5 s.

Also the greave must of the lord's costs make all the bridges over the lord's waters; also the greave shall see that there be no wastes within the lord's woods; and if there be any sale of wood, timber or thorns, the greave shall be of counsel, and make account of it to the lord's auditors, in presence of the lord's tenants, having a stub to his fire.

Also the lord's beadle's duty is to summon the lord's tenants through the soake, at the receiver's commandment, and at the greave's for wood leading; and to have for his labour a load of wood;

and if the lord lye at Southwell so oft as he summoneth, or causeth the tenants to lead, it is his duty to have a load of fire-wood.

Also this is his duty, to attend upon the steward in the court, and to give summons between the lord's tenants for plaints entered, and call them in the court when he is commanded; and at the end of the year to make the officers of the court, of the lord's costs, a dinner of xij*d.* and to gather the extracts of the court for his year, and to make account.

Also it is the lord's tenant's duties to gather the lord's rents throughout all the lordship, and to pay it to the receiver, or to his deputy, within Southwell, and for lack of rent paying, and no sufficient distress, the lands shall be forfeited into the lord's hands.

Also the custom is, that the next court after the beadle giveth summon to any person in plea of lands, trespass or debt, or other action, he shall be called and appear the next day after, or he shall be amerced, except he be essoigned, and if he be essoigned the first day, he shall appear the next day, or be amerced, and the third court day to have distress, and so in plea of lands after the same manner.

Also the custom is, that trial of land shall pass by the verdict of the lord's tenants in the court, and in none other place, between tenant and tenant, and for all other actions the defendant shall wage his law by commandment of the steward.

Also if a man die seised of lands or tenements, his heir, being within the land out of prison, and

king's wars, shall come to the court within one year and a day, or else the next of the blood shall come in ; and if not, the lands and tenements shall be seised into the lord's hands ; also the lord shall have to his fine as much as they pay to the lord for one year's rent.

Also this is the custom, if any man make feoffees in his land to the use of his will, he shall put in two laymen at least, that one of them may come to the court to do such service as belongeth to it ; and if they both die, they shall take other two feoffees, and make unto the lord a new fine within a year, or else forfeit the lands to the lord.

Also the custom is, that no tenant of the lord shall sue another tenant, without the lord's court, without licence of the lord, except the debt be forty shillings, or above, but the lord shall amerce them at his pleasure.

Also the custom is, if a man be seised of lands after the custom, and take a wife, and have issue, and die seised, the wife shall have the lands after the custom, for term of her life, whether the heir be admitted tenant at any time in the life of the woman or no.

Also the custom is, that after the father being dead, his wife being feoffee for term of her life, the next heir shall come into the court and take up the lands at any time in her life, and make sale of the reversion, if he be disposed so to do.

Also the custom is, that if a man be in estate of lands or tenements, and have children by divers wives, the youngest son of the first wife shall in-

herit the said lands and tenements, if he make no surrender to the contrary; and if he have no son, the youngest daughter shall be heir after the same manner; and if the same man have a second wife, and purchase lands, now the youngest son of the second wife shall be heir after the same manner in that land purchased; and if they have more wives, after the same manner; and in likewise as the youngest son of the first wife, so shall the first wife have for term of her life, all the lands and tenements which he is possessed in, except a surrender be made to the contrary.

Also the custom is, that if a surrender be made in the court, or court-yard, it may be taken up by attorney.

Also the custom is, that no surrender is lawful against the heir, except he come in his own proper person within the court or court-yard, and by no attorney for no longer but for xviii. years.

Also the custom is, if a man be seised of lands, he may for xviii. years give his land away from his heir what place soever he be in without the soake, having two of the lord's tenants by, without paying a fine; and if it fortune that the person to whom the lands were given, do die before the eighteen years be ended, it shall return to the heir.

And if there be any lands pledged for xviii. years, if he, to whom the lands are pledged, chance for to die before the xviii. years be ended and complete, his heirs or assigns shall have forth the years.
—2 Show. Cop. 506.

St. John of Jerusalem, Islington, Middlesex.

Lands in this manor descend according to the custom in borough-English, whereby the youngest son of a copyholder inherits, or in default of issue, the younger brother. The fines are arbitrary, and at the will of the lord, whose custom is to take two years improved rent on a descent, and one year and a half on alienation. No heriots are taken. Widows are entitled to dower of the copyhold.—Nelson's Islington, 62.

St. Stephen's Parish, Hertfordshire.

All surrenders of copyhold estates holden of this manor must be taken by the lord or the steward of this court, unless the copyholder making such surrender lie in *extremis*, then two tenants sworn to take such surrender in *extremis* may take it; but if such copyhold tenant that made such surrender shall recover and go abroad, such surrender shall be void. The wife of a copyhold tenant shall be endowed of the thirds in his customary estate. The husband of a copyholder shall be tenant by the curtesy. Copyholders may demise their customary lands without licence for three years, but no longer. Copyhold tenants may fell timber without licence. If a copyholder die seised of any customary lands, leaving no issue male, only daughters, the eldest daughter only shall inherit; and in case of no daughters, but two or three sisters, the eldest sister shall be sole heir by the custom. The

like customs are in the manor of *Cashiobury*.—
Salmon, Herts, p. 91.

Stretford Hundred, Oxfordshire.

The custom is, that the heirs of tenements within the hundred aforesaid, existing after the death of their ancestors, shall have principal, *i. e.* an heirloom, viz. of every kind of cattle, utensil, &c. the best waggon, best plough, best cup, &c.—Co. Litt. 18 *b.*

Titchfield, Hampshire.

Enfranchise copyholds ; 19 Geo. 3, c. 51.

Thornbury, Gloucestershire.

In this manor there are two customs : the one is the ancient custom, the other is called the new custom, and by agreement was confirmed by Act of Parliament in the year 1670.

The ancient custom of the said manor was instituted by Hugh Bohun, Duke of Gloucester, and confirmed by Henry the Seventh, in the second year of his reign ; in which institution, amongst other things, are the following articles :—

1st. There shall no trees be cut down on customary hold, unless one neighbour gives to another. All hollow trees may be cut down.

2nd. The fine of an heir shall be as his ancestors have paid in times past, as his tenure and hold may bear, and quit in two years by the increase above all charges of the same ; and this is the uttermost of the fine.

It hath been constantly held, that all timber

trees belong to the lord, and that for the tenant to make any waste by cutting down the same, unless for necessary repairs, is a forfeiture of his tenure.

It doth not appear that the lord hath at any time made use of such his right by cutting down or taking away any of the said timber ; neither have the tenants at any time felled any or pretended any right to the same, unless for necessary repairs.

It hath also been the constant usage in the old custom, for above sixty years past, for an heir upon his admittance to any customary lands, to pay two years value of such lands, unless by the indulgence of the steward it hath been compounded for some lesser sum, but never less than one year's value and a half ; but the tenants at one time refused to pay either, insisting that two years chief-rent only (which is but a trifle) was due upon admittance.

About the year 1670, the tenants brought their bill in equity to be relieved against the above fine (with other things), but no final decree was made, the lord and the majority of the tenants then entering into the above-mentioned agreement ; so that at this day the lands of those tenants who refused to come into that agreement are held under the ancient custom ; and all the others under the agreement ; in which agreement (amongst other things) are the following clauses, viz.

And the lord upon admittance is to have and take the fines as hereafter is expressed, and not otherwise (that is to say),

Upon the admittance of one or more persons claiming as heir by descent, two full year's value

of the copyhold customary tenements to which he or they shall be admitted, two years chief-rent, and all taxes imposed or to be imposed by authority of Parliament upon the said customary tenements, and payable within the two years next succeeding, such admittance being to be deducted out of the said two years value.

Provided always, that if there be any disagreement between the lord and person to be collected concerning the yearly value of such tenements to which admittance is prayed, that the same shall be given in charge to the homage at the court in which such person shall be admitted, who shall inquire and make presentment of the true value of such customary tenements whereunto he, she, or they, desire admittance upon oath, and the verdict of the homage concerning the yearly value shall be final and conclusive to all parties.—1 Ca. & Opinions, 179.

Tinmouth, Northumberland.

The jury found the custom of this manor to be, that the eldest daughter shall have the whole copyhold for her life; and that after her death, the next heir male to the father shall have it to him and his heirs, who can derive a descent from the males, exclusive to the females; and that if there is no such heir male it shall escheat to the lord.—1 Sid. 267.

Tregoar, or Tregogan, Cornwall.

By the custom of this manor, lands are demisable by copy of court-roll to two or three persons for

term of their lives and of the longest liver of them, *habendum successive sicut nominantur in charta, &c. et non aliter*: and the person first named in the grant enjoys the tenements to him alone during his life, and so the second and third; and the lord is to have heriot of every such person successively dying seised.—2 Ld. Raym. 994; 6 Mod. 63.

Teddington, Middlesex.

The custom is, that any copyholder might surrender out of court into the hands of two tenants, copyholders of the manor, to the use of any other.—Cro Car. 367.

Turlox, Bedfordshire.

The custom of this manor was, that the land was demisable for twenty-one years, paying the treble value of the rent; and if he died within the term, that the term should be to his heir, paying a fine certain of one year's rent; and if he assigned the term, the assignee should have it, paying for a fine one year's value of the rent; and he who had it might, by the custom, renew it for twenty-one years, paying three years value.—3 Cro. 671.

Teddington and Alston, Worcestershire.

The custom of the manor of Teddington and Alston is, that the lord doth annually grant to the copyholders there three lives in possession, and three in reversion; and that the widow of every tenant, dying seised of a copyhold estate, shall have

her freebench in the same during her life, if she so long keep herself a widow ; also a heriot due to the lord upon the death of every tenant dying seised of a copyhold estate, viz. the best beast, or for want thereof the best goods of the deceased ; and further, that the tenant may dispose of his copyhold land to his executor for one whole year next after his death, which is commonly called the deads year. There is a court-leet and court-baron belonging to the manor, to be held at the manor-house at the will of the lord.—Nash, v. 2, p. 233.

Thelton, Norfolk.

The copyhold descends to the youngest son ; the fine is at the lord's will ; the tenants cannot waste their copyhold houses nor fell timber without licence. It gives no dower.—Blomefield's Norf. v. 1, p. 150.

Thetford, Norfolk.

The customs of all the manors in Thetford are, that the eldest son is heir, the free tenants pay a year's free rent at every death, by way of relief ; there is but very little copyhold. There is no leet belonging to these manors, neither do they pay any leet fee.—Blomefield's Norf. v. 2, p. 59.

Tring, Hertfordshire.

The custom of this manor is, upon admission to a copyhold, two years fine.

Tibberton, Worcestershire.

The custom of the manor, as it was presented, 1649, was, that the lord hath always used to grant the

copyholds for three lives in possession, and three in reversion *; the fines being arbitrary at the will of the lord. Nevertheless it appears upon oath, that the lord did usually take for a fine about one year's value of the full improvement of the messuage and lands to be granted for three lives in reversion, after one in possession; and that the widow of every copyholder dying in possession shall have her freebench: viz. her life in the lands her husband died seised of, if so long she keep herself a widow, and to be admitted tenant, paying therefore to the lord 1 *d.* At the death of a tenant an heriot is due for every messuage.--Nash, v. 2, p. 423.

Woodford, Essex.

The custom of this manor is Borough-English.
—Lysons, v. 1, p. 743.

Wadhurst, Sussex.

There are two sorts of copyholds in this manor, viz. Sookland, and Bondland. If a man be first admitted to Sookland, and afterwards to Bondland, and dies seised of both, his heir shall inherit both; but if he be first admitted to Bondland, and afterwards to Sookland, and dies seised of them, his youngest son shall inherit.—*Kempe v. Carter*, 1 Leon. 55.

* Of late years the lord hath only granted for two lives in possession and two in reversion, which is no invasion of the ancient custom, as grants are entirely at the lord's pleasure.

Wakefield, Yorkshire.

In this manor copyholds may be entailed, and the custom to bar such entails is for the tenant in tail to commit a forfeiture; and then after three proclamations made, the lord of the manor may seize for such forfeiture, and re-grant the lands to the copyholder and his heirs, by which means he hath an estate in fee, and by consequence the estate-tail is gone; but another custom to bar those entails is, for the tenant in tail in possession to make a surrender to the purchaser and his heirs, and then such purchaser is to commit a forfeiture, for which the lord of the manor is to seize and to regrant to the purchaser; and by this means the issue in tail are barred, though the tenant in tail did not join.—1 Sid. 314.

Warminster, Wiltshire.

In this manor copyholds are granted for three lives; the first life has a power of surrendering the whole estate; and the widow of a tenant who dies seised is entitled to her freebench.—Cowp. 481.

West Sheen, Petersham and Ham, Surrey.

The rule of customes made the first day of May in the fourth year of the reign of king Edward the Fourth, which customs were granted heretofore by the king and kings unto the tenants belonging unto the lordship of West Sheen, Petersham and Ham; which we the tenants do hold our land by the said

customs, &c. manors granted by the king and kings, time out of mind, as hereafter followeth, viz.

1. *Imprimis*, It was granted to our customes, that we should have a court yearly, at the will of the lord; and that all the tenants thereto belonging shall thither resort upon a fortnight's warning, by a precept made by steward directed to the bailiff, and he to give warning against the day; and those that come not at the said day so warned by the bailiff, shall forfeit the first court two-pence, the second four-pence, the third court six-pence, and so double every court his forfeit.

2. The second part of our custom is, that when the steward and the lord with the king's tenants be assembled in the face of the court then called together by name and sworn, that then the said homage shall enquire whether that any of the king's tenants be deceased, and to present his name and next heir, or whether he died seised or not.

3. The third part of our custom is, that if any tenant do die so seised, that he dieing so seised, then that which descended ought of right to descend by custom of our manor to the youngest son and his heirs, and if he have no son, to the youngest daughter and her heirs; and if she die without issue, to remain to the next of his kin; and if there can none of the kin be found, then to make claim to the lord, that then the lord shall by our custom seize it into his hands as escheat for lack of heirs general; and then the lord of his special grace may grant seisure to whom he listeth, upon a new fine levied to them and their heirs for ever.

4. The fourth part of our custom is, if the said tenant do die without issue, and also seised, having a wife which surviveth him, and if the said wife do come into the said court and make claim unto the lands after the decease of her husband, then she might have by our custom of the heir, the third part of the rent during her life ; and if there be no heir to be found, then she is to have it of the lord.

5. The fifth part of our custom is, that if any tenant will deliver a surrender before his death unto the use of his wife, or to his heirs, that then he must deliver it up into the hands of two of the king's tenants of the said lordship ; and if he deliver it but to one, that stands void and of none effect, except it be in the extremity of death : and further, when the said tenants have received it to the use of their wives or their heirs whom they list to make it unto, the said tenants shall bring in the said surrender at the next court holden after the date thereof, or else the said surrender to be void and of none effect.

6. The sixth part of our custom is, that we hold our lands by the rod, or cobby of court-roll, by custom of our manor at the will of the lord, and that we may lop, top, fell by the ground, wood and timber, and carry it away without any forfeit making of lands and housen, so that we do keep the housen in sufficient reparations, and if we do not keep the reparations, then shall the lord seize it into his hands, and take the profits thereof unto his own use, untill such time as we have sufficiently repaired

them, then to fine with the lord and so to have our lands again, without any interruption on any part made by the lord or his assigns after that we have payd our fine!

7. The seventh part of our custom is, if any tenant that holdeth land of our sovereign lord the king do sue it out of the said court without licence of the lord of the soyle, he to forfeit all his copyhold which he hath lying within the lordship, except it be brought by the commandment of the king or of his most honourable counsell, and furthermore, whether he came to it by inheritance or purchase, and so holdeth it to him, his heirs, or assigns, and so at the time of his death to deliver a surrender unto his next heir, and if so be that after the death of any such tenant the heir doth give, set, or lay to mortgage, and copyhold lands lying within any of the lordships before the said heir be admitted tenant, and hath paid his fine, according to the said customs of the manor of the said lordships, that then all such said surrender and mortgage made by the said heir shall stand clearly void and of none effect, by our customes.

8. The eighth part of our custom is, the lord of the soil may lett, and sett, all manner of waste and void ground, by cobby to any man that will tak it, paying a fine to the lord, and yearly quit-rent to the king, for the lord is bound to augment the king's quit-rent one year better than other by our custom, within any of the said three lordships.

9. The ninth part of our custom is, that all our lands arrable, and unarrable, which lieth abroad in

the common fields, is as common once a year, except certain closes, which lieth inclosure; and for all the common fields one tenant to enter common with another in all vacation times, but not betwixt our Lady-day in Lent, and Michaelmas: and every man that holdeth of the lord a tenement of land shall common by our custom three sheep upon an acre, that is to say, sixty-eight upon a tenement, and four oxen, three kine, two horses, one mare or gelding; and that no man which hath sold all his land from his house shall common for no more but his bare house, that is to say, three kine, one mare or horse, and no more no man shall keep by our custom.

10. The tenth part of our custom is, that if any tenant holding lands of our sovereign lord the king, within any of the lordships, do cast down any parcel of freehold lying between two parcels of copyholds, to the intent to make copyhold land freehold, then the tenant so doing shall forfeit all his copyhold land lying and being within the said lordships, by our customs.

11. The eleventh part of our custom is, that any tenant shall top wood, fell furze or thornes within the several lordships portion and portion alike, and to carry home to their own houses for their own use; and that no man or woman keeping a common brew-house, or bake-house, fell no manner of wood, or furze, or thorns, to bake or brew withall; except he be a tenant in land he shall have no more in the common than his tenure will give, according to our custom.

12. The twelveth part of our custom is, that the quit-rent of our land belonging to the lordship of West Sheen, is two-pence the acre, and six-pence the house without land, the fine of his lordship is two years quit-rent. The quit-rent of Petersham and Ham is four-pence the acre, and six-pence the house, and the fine is one year's quit-rent; every tenement is seven shillings and six-pence by our custom. And unto all these customs we the said tenants of the lordship, we all do hold and affirm, by the grant of the king and kings time out of mind.

And for further assurance our heirs for ever that shall come after us, we have put it in writing for a continual remembrance: done before John Judgell, one of the king's honourable counsell, and John Warman, then the lord of the soil for the time being. In witness whereof John Hart, tenant, William Ballat, tenant, John Howe, tenant, John Brewell, tenant, William Thorne, tenant.

[A most true Coppy from the Ancient Original Coppy, to be produced on all great and necessary occasions.—2 Collectanea Jur. 381.]

Whitelsea, Isle of Ely.

By the custom of this manor the inhabitants choose two persons to be storers, to oversee the public business, and to provide a common bull, for which they were to enjoy bull grass. The major part of the freeholders and copyholders, at a meeting, grant the grass, &c. every year to any person who would take it, growing on the place called Bull Grass, to have the same from Lady-day until the

corn was carried out of Coatsfield.—Nelson's *Lex Maneriorum*, Appendix, Case 16.

Whiston and Claines, Worcestershire.

The lord hath court-leet and court-barons, to which the copyholders, leaseholders, and resiants do suit and service. The jury's dinner is paid for by the lord, who has all the perquisites of the court. Upon death or surrender of any tenant in possession or marriage of a widow seised of a copyhold, one heriot, the best beast, or in default thereof the best goods, is due to the lord. The rent days are Michaelmas and Lady-day. The waste and commonable places not much more than twenty acres, and no wood nor mines. By the custom of the manor the copyholders may let or set their lands for twenty-one years, if they live so long. Within the memory of man it hath not been known that any copyholder hath forfeited his estate to the lord of the manor; but if there be any forfeiture, the reversioner is to take the benefit. The customary tenants have been copyholders of inheritance until within these hundred years, or thereabouts, as may be made appear by divers copies, *sibi et suis* being inserted; which they say would be more evidently proved, might they have sight of the records in King Henry the Eighth's reign; and that it will appear that the fine did not exceed double the lord's rent. But for many years last past the tenants have been constrained to fine at the lord's pleasure; and some to let their inheritance be granted over their heads, for want of ability to pay such great fines as

were required of them, or to try their rights with the lords.

For a hundred years past the copyhold estates have been granted for one life in possession, and three in reversion; the lords having no power to grant any further estate so long as there was any one life in reversion; although there was only a widow's estate in possession; unless the reversioner surrendered, and then to be granted in open court.

The widow hath a right to be admitted to her freebench during her widowhood; and the tenant in possession dying seised of any messuage, or widow during her freebench, hath, by custom of the said manor, power to dispose of the deads year against the lord, which may happen to be almost two years profits, because the first entry of the reversioner is not to be before Candlemas next after the decease of the tenant; and then he is to enter only upon the meadow and fallow.

The lord of the manor is chargeable with the repair of two bridges, Burbone Bridge and Bilford's Bridge; as also of so much of Hawford's Bridge, as is within the parish of Claines.

The tenants owe no other service to the lord than what is expressed in their copies; and they may take the benefit of any trees growing upon their copyhold lands and tenements, without the licence of the lord of the manor.—Nash, v. 1, p. 205.

Wimbledon, Surrey.

The court-rolls of this manor begin 1 Henry 6th, 1422.

At a court-baron, 1st January, 6th Edward 6th, an order was made that they should be kept in a chest in the parish church, with three locks, one of the keys of which was to be kept by the steward, another by the reeve of the manor, and a third by the lord. The customs of the manor are as follow :

1. On change of the lord, the tenants anciently paid a fine or gift of 6*l.* 13*s.* 4*d.* called palfrey money, or saddle silver. This fine was levied on the tenants by an order of the court, held 33d Henry 6th, and of another 30th Henry 8th, when the manor came to the Lord Cromwell, but the tenants prayed time for payment.
2. Every purchaser of a customary estate pays a fine, at the will of the lord, at his first admission, but none for any subsequent admission, nor if he succeed by inheritance.
3. Heriot on death of a customary tenant seised of a yard-land (15 acres), or the greatest part thereof, a black sheep, or in lieu thereof 10*d.* and for a relief 2*s.* 2*d.*
4. If the heir of a customary tenant be within age, he is to be admitted by his guardian, to be assigned by the lord, and to be him to whom the guardianship belongs by rules of common law : for such assignment a fine is to be paid, which has been generally small, but has varied.
5. Customary tenants may let for three years without licence, but not longer, on pain of forfeiting the estate : the fine for such licence has varied.
6. The lord hath a leet at Easter, when the headboroughs pay a common fine ; for *Putney*, 6*s.* 8*d.* ; *Roe-hampton*, 2*s.* ; *Mortlake*, 8*s.* 4*d.* ; *Barnes*, 5*s.* ; *Wimbledon*, formerly 8*s.* 4*d.*, but abated by

reason of the parsonage, to 6 s. 8 d. 7. The customary tenants are to gather the quit-rents, and one who holds two yard-lands, or 30 acres, is annually chosen at the court for that purpose; anciently the tenants named two on thrée, and the lord appointed one of those, and those who held three yard-lands were liable to serve the office of beadle. 8. The inhabitants of the several towns to find weights and scales, stocks, and a whipping post. 9. At courts held 23d October 1640, and 23d June 1663, it was presented by the homage, that by the custom of the manor, out of every fishing room belonging to Mortlake and Putney, several salmons were due, to be delivered annually to the lord by the fishermen there, for their liberty and licence of fishing, and landing and pitching their nets on the soil and shore of the lord, for that the interest of the soil of the river to low-water mark belongs to the lord, and the fishermen are to have licence to fish there. Licences are entered at different times. In 15th Henry 6th, one day was presented for giving to the lord deceitfully the worst salmon taken 24th March, contrary to ancient custom. 10. The wastes and commons, and the trees growing thereon, belong to the lord. 11. The lord hath liberty to grant, with consent of the free and customary tenants, parcels of the waste for years, or otherwise.

Tenant's privileges: 1. On the death of the copyholder, the youngest son or youngest daughter, brother, sister, or nephew, is the customary heir. 2. The husband of a customary tenant shall

be tenant by curtesy, and the wife shall have the dower, as by common law. 3. May let for three years without licence. 4. Have common in the lord's wastes all the year, and hedge-bote, plough-bote, &c. but not to dig gravel, clay, or turf.

In 1805, there were only 11 copyholders in Wimbledon.—Manning, vol. 3. p. 270.

Witham Magna, and Newelond, Essex.

It is the custom of both these manors, that the owners of the freehold lands in either of them must pay one year's full yearly value of those lands upon every death and alienation in certain for a fine to the lord; unless such owner shall be born within that manor to which his lands belong, according to the custom of the said manor; and he is called a purchaser within the manor; and must pay a fine for his first purchase within the said manor. But if such purchaser be born within that manor wherein his lands lie, he pays no fine, but a relief to the lord, which is a double quit-rent, and is thereby excused from paying a fine for his first purchase. There are likewise many copyholders of the said manor, and several leaseholders, who hold by copy of court-roll for term of years, granted by the lord, *ex gratia*, for longer or shorter terms of years, as the lord chooses, paying to him what fines he pleases.—Morant's Essex, v. 2, p. 107.

Worplesdon, Surrey.

1. A copyholder may surrender out of court, in any place, into the hands of any one copyholder, in

presence of any one honest man, be he a tenant or not, to be presented at the next court. 2. Some of the copyholders pay fines certain, others at the will of the lord, but the latter never were more than one year's rent, till within nine years past. A heriot of the best cattle on death, or surrender of a copyhold, unless made certain. 3. Copyholder cannot demise his copyhold for more than a year and a day, unless by surrender. 4. A tenant making a surrender may revoke it within a year and a day next after the delivery of it. 5. Copyholder forfeits his copyhold if he let his messuage go to ruin, or wilfully waste or strip the same, or the timber growing thereon. But by custom a small first offence, through negligence in cutting a tree, shall be amerced; a second is a forfeiture. 6. If the buildings go to ruin, he shall have a day limited in court for the repair. 7. The eldest son or eldest daughter is heir: nor may a copyholder divide his tenement without licence. 8. No copyholder to sue or be sued touching his copyhold, but in court before the steward. 9. If a copyholder forfeit his copyhold, he or his heir shall have the option of a new grant before all others. 10. Courts to be holden twice in the year, once with a law-day. 11. Pannage for hogs of a year old or upwards one penny; under that age nothing. 12. They pay a common fine for every head one penny. 13. Amercements to be by presentment of the homage, to be affeered by two affeerors, whereof for the law-day one to be a freeholder; but if a court without a law-day, by two copyholders. 14. If the lord fell any

tree on a copyhold, the tenant to have the lop and top. 15. The copyholder shall have, without assignment, dead trees and wind-falls on his copyhold. 16. The copyholder may take timber on his own copyhold for repairs without assignment; but if there be none, then by assignment of the steward or bailiff, to have timber from another copyhold or the common. 17. If timber is assigned on another man's copyhold, he to have the lop and top; if on the common, the lord to have it. 18. The copyholder may take all elm-trees, and underwoods, and coppices. 19. The queen and her progenitors have by custom made and maintained all bridges, stocks and pounds. 20. The homage and officers attending the court and the law-day, have their dinner at the queen's charge; but on a special court, at the charge of the party desiring it.—Manning's Surrey, v. 3, p. 92.

Wolverley, Worcestershire.

The custom of the manor is, that the copyholders do hold their estates by fine certain, *sibi et suis*, viz. upon descent the next tenant payeth for his fine a treble chief-rent, and upon alienation four times the chief or old rent: also for a reversion they pay twice their chief-rent contained in their copies, and when the reversioner comes to be admitted tenant, he pays twice the chief-rent. A heriot is due to the lord in kind; viz. the best beast of the tenant dying seised of a copyhold messuage; a heriot also is due to the lord upon alienation of any copyhold estate, viz. 28 s. in money. The custom of

this manor was, to hold their copyholds according to the nature of borough-English, which some of the copyholders thinking might be productive of inconveniences, in the year 1769, (9 G. 3, c. 60,) they procured an Act of Parliament, empowering them to change the said custom into the course of descent, according to the common law.—Nash, v. 2, p. 472.

Woodhall and Henwick, Worcestershire.

In old records mention is made of two manors within the manor of Hollow, viz. Woodhall and Henwick, the farmers of which do suit at the manor of Hollowe; the customs of which two manors are,

If a tenant die before the 2d of February, he may give away the profit of his copyhold estate until Michaelmas following, except meadow and the fallow land, which the reversioner is to enter upon at Candlemas, after the tenant's death; but if the copyholder die after Candlemas, the executors shall sow the Lent crop following, and sow all and receive all the benefits of the land, except the meadows and follows until Michaelmas twelvemonth following, which is the profit of almost two years.—Nash, v. 1, p. 471.

Winfarthing, Norfolk.

The eldest son is heir, the fine is at the lord's will, it gives no dower, the tenants build up, pull down, plant on the waste, and fell timber without licence.—Blomefield's Norfolk, v. 1, p. 190.

Woolwich, Kent.

There is a court-leet and court-baron held yearly for the manor of Woolwich, and a jury and homage sworn and charged out of the residents and tenants to inquire within the manor. In the court-baron the tenants are all free tenants, and pay a relief of one year's quit-rent on every death or alienation.—Hasted's Kent, p. 43.

Wareham, Dorsetshire.

By the custom of this manor both males and females have a right equally in the partition of lands and tenements; 16. Edw. 1.—Blount's Ten., 288.

Warfield, Berkshire.

This manor is held of the manor of Wargrave by copy of court-roll. Lands are demisable by the lord in fee-simple, for life or years.

Woking, Surrey.

There were many disputes between Sir Edward Zouch and the tenants respecting the customs of the manor, which were at last settled by a decree in the Exchequer, in Trinity Term, 8 Charles 1st. 1663, as follows:—The fines are declared to be uncertain and arbitrable. The copyholders may take timber of oak, ash and elm, growing on their copyholds, for repairing and amending the same, and all necessary bootes to be spent and used on their copyhold tenements by the view of the lord,

or his bailiff, according to the assize of the forest, and not otherwise; but not to take timber on one copyhold, to be spent and employed on another. If several copyholds be passed by one surrender, several fines and heriots (being heriotable) shall be paid, and several copies thereof made. If a copyholder surrender part of his copyhold which is heriotable, heriots shall be paid for such parcels so surrendered. As to digging and taking turfs, heath, fern, loam, gravel, clay, and ragstones on the waste, the lord is entreated by the court to let the tenants have the same in reasonable manner, and in places convenient, by assignment as aforesaid, and according to the assize of the forest, without entering into the coverts and layers of his Majesty's deer there. If any copyholder die, his heir being within age, the custody of the body and land of such heir shall be committed by the lord to the next of kindred of the heir to whom the land cannot descend, he being a fit person, at a reasonable fine and upon reasonable security. The lord not to exceed the rates formerly used.—Manning's Surrey, v. 1, p. 124.

Walsall, Staffordshire.

The copyhold tenures in this manor are not burdened with fines or heriots, paying only a few pence annually to the lord as acknowledgment; a copyholder may sell his estate without any restriction in regard of dower, or being at the heavy expense of suing for a fine at the courts of London.—Shaw's Staff. v. 2, p. 73.

Whitchurch and Dodington, Shropshire.

The custom of this manor is, that the first wife shall have her freebench in all the land the husband was ever seised of during the coverture; that the second wife should have a moiety; and the third a third part, so long as she kept her husband above ground.—2 Eq. Ca. Ab. 101.

Yarmouth, Norfolk.

That every deed made and sealed for the conveyance of houses or lands within this burgh, are to be enrolled in the court-roll of the said burgh, and such enrolment shall be as valid as if the same were made in any of the king's courts at Westminster. And if any deed so enrolled be lost or burnt, the said court-rolls shall be accepted as evidence. To enable a married woman to pass her interest in any houses and lands, she must be solely examined by, and acknowledge the deed before the bailiff, which examination shall appear of record to be enrolled on the court-rolls. All releases enrolled debar the releasor, being of full age, for ever. So a widow's release of dower, on which she shall be examined, debars her for ever. The widow to have dower, notwithstanding her husband's conveyance. A will enrolled within a year and a day is a good title to all the claimants, the widow having her dower. Eldest son to be heir, or daughters co-heirs, if no son. A woman may sue for her dower in the burgh-court. Burgh-court to be kept once a week, and adjourned at the bailiff's will.—For more of

the customs, *see* Blomefield's Norfolk, v. 11, p. 332.

Uphall, Norfolk.

The customs of the manor are these; the fine is at the lord's will, the copyhold descends to the eldest son, they cannot waste their copyhold houses nor fell timber without licence.

Yardley, Hertfordshire.

In this manor there is an ancient custom, that if any tenant died seised of any copyhold land held hereof, without heir male, and leave two, three or more daughters or sisters, the eldest daughter or sister shall be sole heir to such copyhold land, and the other daughters or sisters shall have no part thereof.—Salmon, Herts. p. 323.

Henrworth, Hertfordshire.

In this manor some lands are held by fealty, suit of court, certain rents and services. If any tenant, alien, die seised of lands by free deed, the heir at law must be admitted by the rod, do his fealty, and pay his relief. If more than one purchase or descent hath happened since the last court, upon the presentments of the several purchases and descents, the tenant shall be admitted, and pay a relief upon every alteration.

Hyde, Hertfordshire.

In this manor, upon a death or alienation, the heir or purchaser pays 6 *d.* an acre for a fine, and 10 *s.* for a heriot.

Kensworth, Hertfordshire.

The custom of this manor is to pay but a penny fine, either upon descent or purchase, be the estate great or small; for the relief of their free lands the same is paid.

East Hendred, Berkshire.

Copyholds are of inheritance.

ANCIENT DEMESNE.

Those manors are called ancient demesne which were in the hands of Edward the Confessor, or William the Conqueror; and the tenants had six privileges. 1. That they should not be impleaded for any of their lands, &c. out of the said manor. 2. They cannot be impannelled to appear at any court, upon any inquest, or trial of any cause. 3. They are quit from all manner of tolls for things concerning husbandry and sustenance. 4. From taxes and tallage by Parliament, unless they be specially named. 5. From contributions to the expenses of the knights of Parliament, &c. 6. If they be severally distrained for other services they all, for saving of charges, may join in a writ of *monstraverunt*, although they be several tenants.— 4 Coke Inst. 269.

Alton, Hampshire, 3 Lev. Rep. 190.

Alrewas, Staffordshire, 2 Show. Cop. 27.

Andover, Hampshire, Madox Firma, B. 210.

Aylesbury, Buckinghamshire, Gurdon Hist. 226.

Bowden, Leicestershire.

In the case of *Griffin v. Palmer*, Hob. 188, Domesday Book was produced, when it appeared that Bowden, Leicestershire, was ancient demesne, and not Bowden, Northamptonshire.

Bray, Berks, 1 Salk. Rep. 56; 1 Show. Cop. 76.

Bromesgrove, Worcestershire, Hob. 47; 1 Lutw. 711; 1 Show. Cop. 78.

Chippenham, Wiltshire, Madox Firma, B. 248.

Dymock, Gloucestershire, Atkyn's Glouc. 149.

Edenstowe, Nottinghamshire, Madox Firma, B. 76.

Exeter, Devonshire, Isaac, Exeter, 48.

Gillingham, Kent, 3 Lev. Rep. 305.

Hanningdon, Wiltshire, 2 Lutw. Rep. 1144.

Longhope, Gloucestershire, 1 Sid. Rep. 147; 1 Show. Cop. 373. (*ante* 400.)

Lostock, Norfolk, Cro. Eliz. 227.

Ormsby, Norfolk, Madox Firma, B. 93; 2 Show. Cop. 423.

Rickmersworth, Herts, Salmon, 109.

Weston Favell, Kingsthorp, Geddington, Brigstock.

See Bridges, Northamptonshire.

No. XVIII.

SURRENDERS.

ABSTRACT OF STAT. 55 Geo. III, c. 192.

BY this Statute it is Enacted, that in all cases where, by the custom of any manor in England or Ireland, any copyhold tenant of such manor may, by his or her last will and testament, dispose of or appoint his or her copyhold tenements, the same having been surrendered to such uses as should be declared by such last will and testament, every disposition or charge made, or to be made by any such last will and testament, by any person who shall die after the passing of this act, of any such copyhold tenements, or of any right, title or interest in or to the same, shall be as valid and effectual to all intents and purposes, although no surrender shall have been made to the use of the last will and testament of such person, as the same would have been if a surrender had been made to the use of such will.

Dispositions of copyhold estates by will made effectual without previous surrenders to the uses thereof.

Provided, that no person entitled, or claiming to be entitled to copyhold lands, tenements, or hereditaments, in consequence of any testamentary disposition, shall be entitled to be admitted to the same by virtue of any thing in this act contained, except upon payment of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of the surrendering of

Persons admitted under such testamentary dispositions to pay the like fees, &c. as would have been payable on such surrenders.

such copyhold lands, tenements or hereditaments, to the use of such will, or in respect of the presenting, registering or enrolling such surrender, had the same lands, tenements and hereditaments been surrendered to the use of the will of the person so disposing of the same; all such stamp duties, &c. to be paid in addition to the stamp duties, fees, or sums of money due or payable on the admission of such person so entitled or claiming to be entitled to the same copyhold lands, tenements or hereditaments, and the stamp duties to be affixed to the copy of the admission.

Proviso as to
not rendering
ineffectual
any devise
that would
otherwise
have been
valid, &c.

Provided also, that nothing therein contained shall be construed, deemed or taken, at law or in equity, to render invalid or ineffectual any devise or disposition of any copyhold lands, tenements or hereditaments, or of any right, title or interest in or to copyhold lands, tenements or hereditaments, which would be valid or effectual if this act had not been made; or to render valid and effectual any devise or disposition of copyhold lands, tenements or hereditaments, or of any right, &c. which would be invalid or ineffectual if a surrender had been made to the use of the last will and testament of the person attempting to dispose of the same by will; any thing thereinbefore contained to the contrary notwithstanding.

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